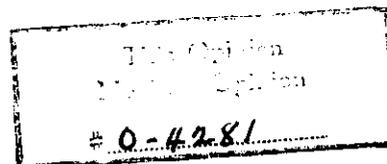




## OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL



Honorable H. W. Pitman  
County Auditor  
Fayette County  
La Grange, Texas

Dear Sir:

Opinion No. 0-4365  
Re: Officers Salary Law - Method  
of computing salaries

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"The Commissioners' Court of Fayette County has under consideration the matter of fixing the Officers salaries for the year 1942 and has before it your Opinion No. 004281, relating to the salary of the County Attorney of Fayette County.

"In such opinion, the minimum salary payable to the County Attorney is based on the following method of calculation, to-wit:

- "(1) Fees collected in cash;
- "(2) Fees earned but not collected;
- "(3) Ex-officio salary earned.

"The above three items are totalled; and from this total is deducted \$2,750.00, the remainder being divided by three. To the resulting figure is added the sum of \$2,750.00, the total representing the minimum salary payable to the County Attorney.

"The above method of calculating the minimum salary is not the method heretofore used in this County, and it occurs to us that in formulating your Opinion 0-4281, your Department did not realize that the method of making these calculations might affect the final minimum salary figure.

Honorable H. W. Pitman, Page 2

"Heretofore, Fayette County has used the following method of arriving at the minimum salary, to-wit: fees earned and collected and fees earned but not collected are totalled. From this figure is deducted the expenses of the office. From the resulting figure (remainder) is deducted \$2,750.00. This figure is then divided by three and to the resulting amount is added \$2,750.00 and the ex-officio salary paid in 1935.

"The difference in the two methods of calculations is this: in your method, the 1935 ex-officio salary is included in the calculation before deducting the \$2,750.00 and dividing by three. In our method, the ex-officio salary is not included until after the \$2,750.00 has been deducted and the division by three is made.

"For an example of the difference that the method of calculation makes there is attached hereto a calculation of the minimum salary payable to the County Clerk based (1) on your method and (2) on our method.

"Which method is correct?"

Upon reconsideration we have reached the conclusion that the method of computation used by us in opinion No. O-4281 was incorrect and that your method of computation outlined in your letter is correct. See the case of Anderson County v. Hopkins, 187 S. W. 1019, which holds that ex officio compensation cannot be regarded as "excess fees" under Article 3891, V. A. C. S.

Opinion No. O-4281 is modified as follows: It is our opinion under the facts stated in opinion No. O-4281 that the Commissioners' Court of Fayette County is legally required to set the salary of the County Attorney of Fayette County at \$3,500.00 per annum.

Very truly yours

APPROVED FEB 4, 1942

ATTORNEY GENERAL OF TEXAS

*Robert Keller*  
FIRST ASSISTANT  
ATTORNEY GENERAL

By

*Wm. J. Fanning*  
Wm. J. Fanning  
Assistant

WJF:CO

APPROVED  
OPINION  
COMMITTEE  
BY *BWT*  
CHAIRMAN