



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Murphy Cole
County Auditor
Liberty County
Liberty, Texas

Dear Mr. Cole:

Opinion No. 9-4465

Re: Whether or not, under the circumstances stated, Liberty County may pay her County Attorney, who is absent in the Army, his salary out of the Officers' Salary Fund.

We have your letter of February 23, 1942, as follows:

"You are advised that the County Attorney of Liberty County, Texas has voluntarily joined the Intelligence Corp of the United States Army.

"The County Attorney has not resigned his position as County Attorney but has appointed an assistant to act in his absence from the county.

"Under these circumstances may the county continue to pay the salary to the County Attorney?

"If your answer to the above question is in the affirmative you are requested to rule, in addition, to the following question:

"The population of Liberty County is in excess of 20,000 and therefore all county officials are paid out of the Officers Salary Fund. The receipts to Officers Salary Fund are derived from fees of office, transfers from General Fund, and a per capita apportionment paid by the State Comp-

troller out of the State Treasury. Therefore, a portion of the salary of the County Attorney is derived from receipts from the State Treasury, as would have likewise been the case if the county were still on the fee system, because the County Attorney earns fees in criminal cases (i.e. cases which are carried to District Court in counties on the fee system), and the per capita apportionment is allotted to counties in lieu of fees paid direct where the county operates under the Officers Salary Fund.

"Therefore, your opinion is sought, as to whether the Constitutional prohibition whereby the State Comptroller may not pay any salary out of the State Treasury to any individual who is also receiving pay from the Federal Government, would apply in the local case where State money is remitted to the local Treasury for payment of salaries to officials of political subdivisions, where such official is in the armed forces?"

Section 33 of Article XVI of the Constitution provides:

"The accounting officers of this State shall neither draw nor pay a warrant upon the treasury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, except as prescribed in this Constitution.

* * *

This Section does not supervene to prevent the payment of the County Attorney of Liberty County, because the pay of the County Attorney is not by warrant upon the treasury of the State, but, on the contrary, is by the county out of the Officers' Salary Fund.

It can make no difference that a part of this Officers' Salary Fund may be constituted by the allocation from the State Treasury. The fact remains that when it is thus constituted and the amount thereof has been transmitted to the county authorities, it ceases to be State funds and becomes a part of the Officers' Salary Fund of the county, and

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as such is disburseable by the county authorities.

What we have said, in connection with what we have heretofore ruled in Opinion No. 0-3448, a copy of which opinion we hand you herewith, will sufficiently answer your inquiry, we trust.

For your further information, however, we suggest that, should such county official accept and exercise an office in the Army, he would vacate his county office, under Section 12 of Article XVI of the Constitution, as held by us in Opinion No. 0-4343, copy of which is also attached hereto.

Very truly yours

APPROVED MAR 14, 1942

ATTORNEY GENERAL OF TEXAS

Thomas A. Miller
FIRST ASSISTANT
ATTORNEY GENERAL

By

Ocie Speer
Ocie Speer
Assistant

OS-MR

Enclosure

