



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Burl Brittain
County Auditor
San Patricio County
Sinton, Texas

Dear Sir:

Opinion No. 0-4515

Re: What is the minimum salary and what is the maximum salary that the Commissioners' Court can legally set for the county judge for the year 1942, and related questions?

Your letter of April 2, 1942, requesting the opinion of this department on the questions stated therein reads as follows:

"The population of San Patricio County according to the 1930 census was 23,646 and the population according to the 1940 census is 23,871.

"The fees of office earned by the County Judge of San Patricio County for the year 1935 were as follows:

"Total fees earned	\$ 662.53
Ex-Officio salary paid	<u>1999.92</u>
"Total	\$ 2662.45
Authorized Deductions (Art 3899)	
Bond Premium	<u>7.50</u>
"Net Total	2654.95

"Questions:

- "1. Is or, is not the difference between \$2654.95 and \$2400.00 excess fees of office?
- "2. What is the minimum salary and what is the maximum salary that the Commissioners Court

can set for this officer for the year 1942?

- "3. Would this County had to have had 25001 or more population in 1935 in order to be governed by the provisions of Art. 3883 P. 2 and Art. 3891 P. 2 now?"

Article 3883, Vernon's Annotated Civil Statutes, provides in part:

"Except as otherwise provided in this Act, the annual fees that may be retained by precinct, county and district officers mentioned in this Article shall be as follows:

"1. In counties containing twenty five (25,000) thousand or less inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Twenty-four Hundred (\$2400.00) Dollars each; . . ."

Article 3891, Vernon's Annotated Civil Statutes, provides in part:

"Each officer named in this Chapter shall first out of the current fees of his office pay or be paid the amount allowed him under the provisions of Article 3883; together with the salaries of his assistants and deputies, and authorized expenses under Article 3899, and the amount necessary to cover costs of premium on whatever surety bond may be required by law. If the current fees of such office collected in any year be more than the amount needed to pay the amounts above specified, same shall be deemed excess fees, and shall be disposed of in the manner hereinafter provided.

"In counties containing twenty-five thousand (25,000) or less inhabitants, District and County officers named herein shall retain one-third of such excess fees until such one-

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third, together with the amounts specified in Article 3883, amounts to Three Thousand Dollars (\$3,000). . . ."

Article 3912e, Section 13, Vernon's Annotated Civil Statutes, reads in part as follows:

"The Commissioners' Court in counties having a population of twenty thousand (20,000) inhabitants or more, and less than one hundred and ninety thousand (190,000) inhabitants according to the last preceding Federal Census, is hereby authorized and it shall be its duty to fix the salaries of all the following named officers, to-wit: sheriff, assessor and collector of taxes, county judge, county attorney, including criminal district attorneys and county attorneys who perform the duties of district attorneys, district clerk, county clerk, treasurer, hide and animal inspector. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by him in his official capacity for the fiscal year 1935, and not more than the maximum amount allowed such officer under laws existing on August 24, 1935; . . ."

On August 24, 1935, the population of San Patricio County, Texas, according to the then last preceding Federal Census of 1930 was 23,846 inhabitants, and at that time the maximum amount which the county judge was entitled to under Article 3883 and Article 3891, Vernon's Annotated Civil Statutes, was the sum of \$5,000.00 per year.

Under the facts stated in your letter, the total amount of fees earned by the county judge for the year 1935 was \$662.53 and an ex officio salary of \$1,999.92 was paid to the county judge for that year making a total of \$2,662.45.

Article 3895, Vernon's Annotated Civil Statutes, prohibits the Commissioners' Court from allowing compensation for ex officio services to county officers where the compensation and excess fees which they are allowed to retain shall reach the maximum provided for, but provides that where the compensation and excess fees do not reach such maximum, the

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court shall allow compensation if in their judgment it is necessary. This provision itself authorizes an allowance for ex officio services within the limitation stated; payment need not be authorized by some other statute. (Veltman v. Slator, 217 S. W. 878; Texas Jurisprudence, Volume 34, page 546) The above mentioned statute (Article 3895) authorizes the Commissioners' Court to allow an officer compensation for ex officio services provided that such compensation, together with the fees retained by him under the preceding sections (Article 3883 and Article 3891, supra) does not amount to more than the limit fixed by them. The compensation so allowed is not to be regarded as excess fees of which the officer can receive; only one-third, where his total compensation, including such allowances, is less than the prescribed limit. (Anderson County v. Hopkins, 187 S. W. 1019; Texas Jurisprudence, Volume 34, page 547)

In view of the foregoing authorities and the facts stated in your letter, we answer the first question stated above in the negative.

In reply to your second question, you are advised that the minimum salary of the county judge for the year 1942 is \$2,662.45, and the maximum salary that the Commissioners' Court can legally set for the county judge for the year 1942 is \$3,000.00.

In connection with the foregoing, we call your attention to the case of Nacogdoches County v. Winder, 140 S. W. (2d) 972 (writ refused), referring to Section 13 of Article 3912e and Article 3891, Vernon's Annotated Civil Statutes, where it was said:

"Under the statutes the salary of the county clerk of Nacogdoches County was governed by the minimum salary earned in 1935, and the maximum salary of \$3500.00."

With reference to the third question stated above, in view of the above mentioned authorities and the facts stated, we respectfully answer the same in the affirmative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Ardell Williams
Assistant

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