



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Eugene Brady  
County Attorney  
Hunt County  
Greenville, Texas

Dear Sir:

Opinion No. 04554

Re: Under the facts stated would the County Treasurer of Hunt County be entitled to a commission for handling the proceeds of road bonds?

Your letter requesting our opinion on the above stated question reads in part as follows:

"Under the provisions of Article 752 RCS a political subdivision of this county, that is a Justice Precinct held an election and voted special road bonds. These bonds have been issued and the County Treasurer has received the money for the sale of the bonds that have become due. The county treasurer contends that he is entitled to a commission for handling this money.

"By order of the Commissioners Court the total compensation of the county treasurer has been limited to \$600.00 for a number of years. His salary was set at \$600.00 the year such bonds were issued and for each year thereafter by proper order of the commissioners court.

"It is held in Williams vs. Cass County 147 S W 2d 588 that the commissioners court may limit the total annual compensation to be paid to the county treasurer at 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 County Treasurer of this county was allowed the sum of \$600.00 as total annual compensation for his services by order of the commissioners court theretofore passed.

"It has been held, as I understand it, that the county treasurer is nevertheless entitled to compensation for handling special funds which are not county funds such as funds for levee and drainage improvement districts and the like. Therefore the question here is as I see it, are the funds of a special road district, created from a political subdivision of the county, county funds. If they are, it would seem to me to follow that the county treasurer would not be entitled to additional compensation for handling these funds. Article 752c provides that the county treasurer is custodian of such funds and shall deposit them with the county depository in the same manner as county funds are deposited. Article 752p provides for the paying out of such funds by the county treasurer upon proper warrants drawn upon the road fund. Article 752r provides 'Any road district or any political subdivision accepting the provisions of this act shall be a body corporate and may sue and be sued in like manner as counties.' This act appears to have been passed in 1926. The Supreme Court in *Winder Bros vs. Sterling* 128 W 127 states that a road district of a county may be a body corporate or the description may signify merely an administrative device of the county itself.

"From these statutes cited and from the construction placed thereon by the courts it seems clear to me that the handling of the funds of a special road district created from a political subdivision of the county is as much the duty of the county treasurer as the handling of any other county funds, and the county treasurer would not be entitled to additional compensation by reason of the receiving and paying out of such funds."

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We have carefully considered the statutes and cases mentioned in your letter in connection with certain provisions of Article 3912c, Vernon's Annotated Civil Statutes, and our opinion No. 0-2940, and agree with the conclusion reached by you.

Section 3 of Article 3912c, supra, provides in part:

"In all cases where the Commissioners' Court shall have determined that county officers or precinct officers of such county shall be compensated for their services by the payment of an annual salary, neither the State of Texas nor any county shall be charged with or pay to any of the officers so compensated, any fee or commission for the performance of any or all of the duties of their offices but such officers shall receive said salary in lieu of all other fees, commissions or compensation which they would otherwise be authorized to retain; . . . provided further, that the provisions of this Section shall not affect the payment of costs in civil cases by the State but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act to account for fees, commissions and costs collected from private parties."

Section 13 of said Article 3912c provides in part:

"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, assessors and collectors 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

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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. . . ."

We note that you state: "Therefore the question here is as I see it, are the funds of a special road district, created from a political subdivision of the county, county funds."

For the purpose of this opinion we do not think it is necessary to pass on this proposition. If the road district funds are county funds, the county treasurer is clearly not entitled to any commission for handling them under the express provisions of Article 3912e, supra. If they are not county funds and there is no statute that we have been able to find allowing the treasurer a commission for handling them, then the treasurer cannot collect a commission, for none has been fixed and it has been made his duty to receive and disburse said funds by Article 752c, supra.

In view of the foregoing, it is our opinion that the above stated question should be answered in the negative, and it is so answered.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

Approved May 15, 1942  
/s/ Gerald C. Mann  
Attorney General of Texas

By /s/  
Ardell Williams  
Assistant

Approved: Opinion Committee  
By BWS, Chairman

WJF

AW:GO