



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD G. MANN
ATTORNEY GENERAL

Honorable Denver E. Perkins
County Attorney
Gonzales County
Gonzales, Texas

Dear Sir:

Opinion No. 0-4583

Re: Under the facts stated, is a local registrar of births and deaths, appointed by the City and acting as such registrar in an incorporated city, to be paid by the County or by the City?

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

"The City of Gonzales is incorporated under the general laws, and has a population of more than 2500, according to the last census. The City Clerk does not act as local registrar of births and deaths, and another party has been appointed to act as such local registrar. This local registrar, appointed by the City, has filed a claim with the Commissioners Court of Gonzales County for a fee of 50¢ for each birth certificate made out by him.

"Is such local registrar of births and deaths, appointed by the City and acting as such registrar in an incorporated city, to be paid by the County or by the City?"

"I am unable to submit anything in the way of a brief on this matter, except to invite your attention to Article 4477, Rule 36a and Rule 53a, Vernon's Annotated Civil Statutes. It is my opinion that the County is liable for these fees, but the language of Rule 53a, requiring the payment of 50¢ for each birth certificate 'unless such local registrar shall be acting as registrar of births and deaths in an incorporated city where compensation of the registrar is otherwise fixed by city ordinance', is confusing and might indicate that

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payment is to be made by the City rather than by the County. Will you please give me your opinion on this matter?"

In opinion No. 0-3874 this department has heretofore rendered an opinion pertaining to a question similar to the one presented in your inquiry. This opinion holds that a city clerk also serving as registrar of vital statistics in an incorporated city having a population of more than 2,500 inhabitants, which does not have an ordinance providing a salary or fee for his duties as registrar, but whose salary is fixed in the minutes of the City Commission or City Council, as the case may be, without reference to his duties or obligations to register birth and death, is entitled to receive from the County the regular fee as provided by law under House Bill No. 821, Acts of the 47th Legislature if said city clerk is serving as registrar of vital statistics performing all the duties and requirements imposed upon a local registrar by law. We enclose a copy of this opinion for your convenience.

Rule 37a, Article 4477, Vernon's Annotated Civil Statutes, provides in effect that where the local registrar fails or refuses to secure the registration of all births and deaths in his district, or neglects to discharge the duties of his office as set forth in the act, the State Board of Health shall declare that district to be without a local registrar of births and deaths, and shall, with the confirmation of the County Judge or the City Mayor, as the case may be, appoint a local registrar of births and deaths for that district.

It appears to have been the intention of the Legislature that the local registrar receive specific compensation for the performance of his vital statistics duties whether he be Justice of the Peace or a city clerk or some person appointed as authorized by Rule 37a, supra.

Under Rule 53a, Article 4477, it is provided "that each local registrar shall be paid the sum of 50¢ for each birth and death certificate properly and completely made out and registered with him, and correctly recorded and properly returned by him to the State Bureau of Vital Statistics". It is also provided further in paragraph 3 of Rule 53a, supra, that "the local registrar shall submit to the Commissioners' Court or the County Auditor, as the case may be, a true and

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accurate copy of each birth and each death certificate filed with him, and such copy shall be deposited in the County Clerk's office. . ."

In view of the foregoing provisions of Article 4477 and our opinion No. 0-3874, and authorities cited therein, it is our opinion that the above mentioned local registrar must be compensated for his services as such by the County, provided, the local registrar was appointed by the State Board of Health with the confirmation of the City Mayor. It is our further opinion that if the local registrar was not so appointed, he would not be entitled to any fees.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*
Ardell Williams
Assistant

AW:hp



APPROVED MAY 8, 1942

Gerard M. ...
ATTORNEY GENERAL OF TEXAS