



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Conn R. Isaacs
County Auditor
Milam County
Cameron, Texas

Dear Sir:

Opinion No. 0-5070

Re: Under the facts submitted would it be legal and permissible to hire a part time court reporter and pay for such services on a per diem basis?

Your letter of January 27, 1943, requesting the opinion of this department on the above stated question reads in part as follows:

"Milam County constitutes the 20th. Judicial District of Texas and under Article 2327a, Civil Statutes has been paying the regularly appointed reporter an annual compensation of \$2700.00, payable in equal monthly installments.

"The regularly appointed Court Reporter for this District has resigned and a vacancy in said office now exists.

"There is at present very little litigation, civil or criminal in the district and there is at this time no necessity for a full time court reporter.

"Is Article 2321 Civil Statutes, mandatory or would it be permissible for the District Judge to make arrangements with a reporter or reporters from a nearby city to serve our District Court when cases are actually tried and for this county to pay for such service on a per diem basis?

"This arrangement would not interfere with the fees which the law allows reporters for transcripts etc but would only apply to the compensation which the county has heretofore paid under Article 2327a, Civil Statutes.

". . . ."

Article 2321, Vernon's Annotated Civil Statutes provides in part:

"Each district and criminal district judge shall appoint an official court reporter who shall be a sworn officer of the court and shall hold his office during the pleasure of the court. . . ."

Article 2323, Vernon's Annotated Civil Statutes provides:

"In case of illness, press of official work, or unavoidable disability of the official shorthand reporter to perform his duties in reporting proceedings in court, the judge of the court may, in his discretion, authorize a deputy shorthand reporter to act during the absence of said official shorthand reporter, and said deputy shorthand reporter shall receive, during the time he acts for said official shorthand reporter, the same salary and fees as the official shorthand reporter of said court, to be paid in the manner provided for the official shorthand reporter; but the said official shorthand reporter shall also receive his salary in full during said temporary disability to act. The necessity for a deputy official shorthand reporter shall be left entirely within the discretion of the judge of the court."

Article 2324, Vernon's Annotated Civil Statutes reads as follows:

"Each official court reporter shall:

"Attend all sessions of the court, take full shorthand notes of all oral testimony offered in every case tried in said court, together with all

objections to the admissibility of the evidence, the rulings and remarks of the court thereon, and all exceptions thereto.

"Preserve all shorthand notes taken in said court for future use or reference for a full year, and furnish to any person a transcript in question and answer form or narrative form of all such evidence or other proceedings, or any portion thereof as such person may order, upon the payment to him of the fees provided by law.

"When any party to any suit reported by any such reporter shall desire a transcript of the evidence in said suit, said party may apply for same and shall indicate whether he desires same in question and answer form or in narrative form. In the event such transcript should be ordered in question and answer form, then such reporter shall make the same up in duplicate in question and answer form, and shall receive as compensation therefor the sum of fifteen cents per hundred words for the original. In the event said transcript should be ordered made in narrative form, then such reporter shall make up same in duplicate in narrative form, and shall receive as compensation therefor the sum of twenty cents per hundred words for the original; provided, that in case any reporter charges more than the fees herein allowed he shall be liable to the person paying the same a sum equal to four times the excess so paid."

Article 2327a, Vernon's Annotated Civil Statutes provides in part:

"In each Judicial District of this State composed of one county only, and in which county there is only one District Court, and also in each Judicial District composed of two (2) or more counties, and also in each Judicial District composed of one county, which county composes also a portion of another Judicial District, the salary of the official Court Reporter shall be Twenty-seven Hundred Dollars (\$2700) per annum, in addition to the compensation for transcript fees and allowances for

expenses now provided by law; said salary to be paid monthly by the Commissioners Court of the county or counties, out of the General Fund of the county or counties, upon the certificate of the District Judge; . . ."

Article 2321, supra, authorizes and requires each district and criminal district judge to appoint an official court reporter. Article 2323, supra, authorizes the district judge or the criminal district judge to appoint a deputy reporter when there is a necessity for a deputy official shorthand reporter. The necessity for a deputy official shorthand reporter is left entirely within the discretion of the judge of the court. Article 2324, supra, sets out the duties of the official court reporter and Article 2327a, supra, provides and authorizes the salary to be paid to the official court reporter and fixes the amount of such salary in addition to the compensation for transcript fees and allowances for expenses now provided by law. This statute further provides that the salary shall be paid monthly by the commissioners' court of the county or counties out of the general fund of the county or counties, upon the certificate of the district judge.

There is no statute so far as we have been able to find authorizing the district court to appoint a part-time court reporter and pay for such services on a per diem basis.

Generally speaking public officers and governmental and administrative boards possess only such powers as are expressly conferred upon them by law or necessarily implied from the powers so conferred. They cannot legally perform acts not authorized by existing law. (See Tex. Jur. Vol. 34, p. 440 and authorities cited therein).

As the foregoing statutes provide for the appointment of court reporters and deputy official shorthand reporters and fix the compensation of such reporters and official shorthand reporters it is our opinion that such statutes are controlling and must be followed by the district judge or judges when appointing court reporters or deputy official shorthand reporters and that the compensation allowed by such statutes must be paid to such reporters or

Honorable Donn H. Isaacs, Page 5

deputy reporters. As the foregoing statutes or any other statutes that we have been able to find do not authorize the district judge or judges to appoint a part-time court reporter and pay for such services on a per diem basis, we respectfully answer the above stated question in the negative.

Yours very truly

APPROVED FEB 8, 1948

Proctor Sullivan

FIRST ASSISTANT
ATTORNEY GENERAL

ATTORNEY GENERAL OF TEXAS

By *Arnell Williams*

Arnell Williams
Assistant

AW:mp

