



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Hon. Mart W. Jones
County Auditor
Gaines County
Seminole, Texas

0-6139

Dear Mr. Jones:

Opinion No. 0-6139
Re: Can member of army of
the U. S. hold office
of county auditor, when
otherwise qualified?
Also can assistant county
auditor of Gaines Co., Texas,
be paid as salary the sum
of \$2124.00 for service
rendered from March 17,
1943, to Jan. 1, 1944?

We have received your opinion request of recent
date and quote from same as follows:

"On January 7, 1943, I was appointed County
Auditor of Gaines County and qualified in due form,
but did not perform any of the duties of office be-
cause of service in the Army of the United States.
There was some delay in appointing an Assistant
County Auditor because of the fact that the District
Judge was also in the army. However, on March 17,
1943, the appointment was announced, and the appointee
subsequently qualified.

"For both appointments, the salary was set at
\$2125.00 per year. No compensation was received by
the writer, but \$2124.00 was paid to the Assistant
County Auditor for his services for the year of 1943.

"I shall appreciate your opinions upon the
following questions:

- "1. Can the Assistant County Auditor legally
receive \$2124.00 for his services subsequent to
March 17, 1943, when the annual compensation was set
at \$2125.00 per year?

"2. Can I legally hold the office of County Auditor, and if so, would I be eligible for re-appointment?"

The population of Gaines County, according to the 1940 Federal Census, is 8,136.

Article 3902, V. A. C. S., provides in regard to salaries of deputies, assistants and clerks of district, county and precinct officers, as follows:

"In counties having a population of twenty-five thousand (25,000) or less inhabitants, first assistant or chief deputy not to exceed Eighteen Hundred (\$1800.00) Dollars per annum; other assistants, deputies or clerks not to exceed Fifteen Hundred (\$1500.00) Dollars per annum each."

In view of the limitation on assistants' salaries, as provided in said Article 3902, we answer your question No. 1 in the negative. We point out further in this connection that the maximum salary that could be allowed the Assistant County Auditor of your county under the law is \$150.00 per month, such compensation to begin on the day said assistant qualified for office. The compensation for a fractional part of a month should be a proportionate part of such monthly salary.

This department has held in numerous opinions that a county officer's service in the Army of the United States does not of itself disqualify him from holding such county office and receiving compensation therefor. Therefore, if you are otherwise qualified for appointment to the office of county auditor of Gaines County, Texas, we answer your question No. 2 in the affirmative, as your military service in the Army of the United States would not disqualify you.

We are enclosing herewith our Opinions Nos. 0-5834, 0-5791, 0-5605, and 0-5017, in support of the next above holding.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Robert L. Lattimore, Jr.*
Robert L. Lattimore, Jr.
Assistant.

OPINION
COMMITTEE
A. 11-12