



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable John R. Shook
Criminal District Attorney
Bexar County
San Antonio, Texas

Opinion No. 0-7535

Re: Conflicting provisions of
House Bill 849 and Senate
Bill 246, Acts 49th Legis-
lature, as applied to
Bexar County

Dear Sir:

In your recent letter to this department, you made the following request:

"Your opinion is requested whether or not justices of the peace and constables of this County are entitled to a maximum salary of Forty-five Hundred (\$4500.00) Dollars per year under House Bill 241 or House Bill 849, and whether or not such provisions are in irreconcilable conflict with the provisions of S. B. 246."

Since House Bill 241, Section (d) reads the same as House Bill 849, Section (h), we shall consider only the latter, which is the later act, in connection with Senate Bill 246, Section 6.

We quote the two bills for reference:

House Bill 849, Sec. (h):

"All Justices of the Peace and Constables of such counties who are compensated on a fee basis as provided by law shall be entitled to retain annual fees not to exceed Forty-five Hundred Dollars (\$4500) each. All Justices of the Peace and Constables of such counties who

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are compensated on a salary basis as provided by law shall receive an annual salary of not to exceed Forty-five Hundred Dollars (\$4500) each, such salary to be fixed by the Commissioners Court. Provided, however, that all fees and commissions whether current or delinquent which are collected by the incumbent during his tenure of office shall be applied first to the payment of his deputies, authorized expenses of his office and to make up the maximum compensation provided for in this subsection. No such officer shall be entitled to receive for any purpose any fees or commission that are collected after he ceases to hold such office."

Senate Bill 246, Sec. 6:

"All Justices of the Peace and Constables of such counties who are compensated on a fee basis as provided by law shall be entitled to retain annual fees and/or salary of Forty-seven Hundred Fifty (\$4750.00) Dollars each; provided, however, that all fees and commissions, whether current or delinquent, which are collected by the incumbent during his tenure of office shall be applied first to the payment of his deputies, authorized expenses of his office, and to make up the maximum compensation provided for in this section. No such officers shall be entitled to receive for any purpose any fees or commissions that are collected after he ceases to hold such office."

Our Opinion No. 0-6728, approved July 31, 1945, held that Senate Bill 246 repeals House Bill 849 insofar as the two acts are in irreconcilable conflict.

House Bill 849 applies to counties having a population of 225,000 inhabitants or more, and less than 500,000 inhabitants according to the last preceding Federal census. Senate Bill 246 applies to counties having a population of not less than 300,000, nor more than 500,000, according to the last preceding Federal census.

Since the population of Bexar County according to the last preceding Federal census, was 338,176 inhabitants, the provisions of Senate Bill 246 would apply, and would prevail over any provisions in House Bill 849 which are in irreconcilable conflict.

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Senate Bill 246 clearly predicates its provisions on those "who are compensated on a fee basis". It would not be consistent with this opening phrase to say the following phrase, "annual fees and/or salary", meant anything but compensation or remuneration resulting from fees.

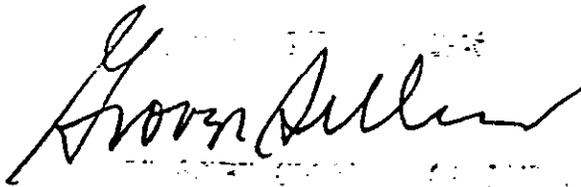
House Bill 849 refers to precinct officers compensated on either a fee basis or a salary basis.

Therefore, it is our opinion that insofar as justices of the peace and constables who are compensated on a fee basis in counties with a population of not less than 300,000, nor more than 500,000, according to the last preceding Federal census, the two acts are in irreconcilable conflict and the maximum compensation of such officers are governed by the provisions of Senate Bill 246.

In counties having a population of 225,000 inhabitants or more, and less than 500,000 inhabitants, according to the last preceding Federal census, the maximum compensation of justices of the peace and constables who are compensated on a salary basis, are governed by the provisions of House Bill 849.

Yours very truly

ATTORNEY GENERAL OF TEXAS



By *William B. Henley, Jr.*
 William B. Henley, Jr.
 Assistant

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