



**OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

January 14, 1947

Honorable S. M. Pliler
County Auditor
Taylor County
Abilene, Texas

Opinion No. V-02

Re: Under the given facts can the Commissioners' Court of Taylor County grant an increase in salary of the County Treasurer, under the provisions of Senate Bill 123, Regular Session, Forty-ninth Legislature?

Dear Sir:

Your request for an opinion has been received and carefully considered by this Department. We quote from your letter as follows:

"The Treasurer of Taylor County, up to this time, has received as compensation Two Thousand Dollars annually. He has made application to the Commissioners' Court for an increase of Five Hundred Dollars annually and has requested that this increase in salary be made retroactive to the date when he was first entitled to make application for increase in salary under recent legislation, particularly Senate Bill No. 123.

"Please advise me if the Commissioners' Court may grant the increase in salary, and also advise if the increase in salary may be made retroactive."

In 1940 the Federal Census showed the population of Taylor County to be forty-four thousand one hundred forty-seven (44,147). The tax valuation of Taylor County is Twenty-one Million One Hundred Ninety Thousand Dollars (\$21,190,000.00).

Section 13 of Article 3912e, V. A. C. S., is in part as follows:

"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, Assessor and Collector 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 salary in twelve equal installments of not less than the total sum earned as compensation by him in his official capacity for the fiscal year of 1935, and not more than the maximum amount allowed such officer under laws existing on August 24, 1935; provided that in counties having a population of twenty thousand (20,000) and less than thirty-seven thousand five hundred according to the last preceding Federal Census, and having an assessed valuation in excess of Fifteen Million (\$15,000,000.00) Dollars according to the last approved preceding tax rolls of such county, the maximum amount allowed such officers as salaries may be increased one (1%) percent for each One Million (\$1,000,000) Dollars valuation or fractional part thereof in excess of said Fifteen Million (\$15,000,000.00) Dollars valuation over and above the maximum amount allowed such officers under laws existing on August 24, 1935; and provided that in counties having a population of thirty-seven thousand five hundred (37,500) and less than sixty thousand (60,000) according to the last preceding Federal Census and having an assessed valuation in excess of Twenty Million (\$20,000,000) Dollars according to the last preceding approved tax roll of such county, the maximum amount allowed such officers as salaries may be increased one (1%) percent for each One Million (\$1,000,000) Dollars or fractional part thereof in excess of said Twenty Million (\$20,000,000) Dollars valuation over and above the maximum amount allowed such officers under laws existing on August 24, 1935."

The above quoted Section of Art. 3912e became effective January 1, 1936, and is applicable to Taylor County. The maximum annual salary which could have been allowed to the County Treasurer of said county under the

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law existing on August 24, 1935 (Art. 3943, V.A.C.S.) was Two Thousand (\$2000.00) Dollars.

In answer to your first question, that is, whether or not the Commissioners' Court may allow a Five Hundred Dollar (\$500.00) annual increase in the Treasurer's salary, we quote from Attorney General's Opinion No. 0-6646 as follows:

"S. B. 123, Acts of the 49th Legislature, Regular Session, 1945, is, in part, as follows:

"Section 3. That Section 13 of Article 3912e, Revised Civil Statutes of Texas, 1925, as amended, be and the same is hereby amended by adding thereto the following:

"(e) The Commissioners Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the officers justify the increase, to enter an order increasing the compensation of the precinct, county and district officers in the precinct, county and district officers in an additional amount not to exceed twenty-five (25%) per cent of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year of 1944 did not exceed the sum of Thirty-six Hundred (\$3600.00) Dollars.'

"The Compensation of the county treasurer of Galveston County is controlled by Section 13 of Article 3912e. Under Section 13 of Article 3912e the county treasurer is allowed a compensation 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.' As Galveston County has a population of 64,401 inhabitants according to the 1930 census the maximum compensation the county treasurer could have retained was the sum of Two Thousand Dollars (\$2,000.00) per annum (Article 3943)."

In view of the foregoing, it is the opinion of this Department that the Commissioners' Court of Taylor County has the authority to allow the twenty-five per cent (25%) increase as provided in Section 3 of S.B.123, Acts of the 49th Legislature, Regular Session, 1945.

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As to your last question regarding the authority of the Commissioners' Court to grant increase in said salaries retroactive thereto, we point out certain provisions of Section 44 of Article 3 of the Constitution of Texas, which are as follows:

"The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors not provided for in this constitution, but shall not grant extra compensation to any officer, agent, servant or public contractor after such public service shall have been performed or contract entered into for the performance of the same."

Our Opinion No. 0-6576 holds in effect that the foregoing provision of the Constitution prohibits officers who are paid under the General Salary Law from receiving an increase in salary for any certain part of the year for which the work has already been performed. We believe the principal emphasis of this holding applies also to the instant case and the increase in salary may not be made retroactive.

SUMMARY: Where the County Treasurer of Taylor County is receiving an annual salary of \$2,000 as provided under Article 3912E, Section 13, V. A. C. S., the Commissioners' Court may grant an increase of \$500 annually under Article 3891, Section 3, R. C. S. (Senate Bill 123, Acts of the 49th Legislature, R. S., 1945). The said increase shall not be made retroactive as it is prohibited under Sec. 44 of Art. 3 of the Constitution of Texas.

Yours very truly

APPROVED JAN. 14, 1947.

ATTORNEY GENERAL OF TEXAS

Price Daniel
ATTORNEY GENERAL

By *Bruce Allen*
Assistant

BA:jrb

Approved - Opinion Committee
By BWB, Chairman