



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

March 13, 1948

Hon. John Atchison  
County Attorney  
Cooke County  
Gainesville, Texas

Opinion No. V-519

Re: Authority of the Commissioners' Court of a county of more than 20,000 population to fix the salary of a constable at any time subsequent to its first regular meeting in January.

Dear Sir:

Your request for an opinion from this office on the above subject matter is, in part, as follows:

"Your opinion is requested as to whether the Commissioners Court of a county of more than 20,000 population has the authority at any time subsequent to its first regular meeting in January of any calendar year to enter an order placing a certain precinct constable's office on a salary for that year, and fixing the salary."

We quote the following pertinent statutory provisions:

Art. 3912e, V. C. S.:

"Section 2. The Commissioners Court of each county in the State of Texas, at its first regular meeting in January of each calendar year, shall, by order made and entered in the minutes of said court, determine whether precinct officers of such county (except public weighers and registrars of vital statistics) shall be compensated on a salary basis as provided for in this Act, or whether they shall receive as their compensation, such fees of

office as may be earned by them in the performance of the duties of their offices, and it shall be the duty of the county clerk of each county to forward to the Comptroller of Public Accounts of the State of Texas on or before the 31st day of January a certified copy of such order. In counties having a population of less than twenty thousand (20,000) inhabitants according to the last preceding Federal Census, it shall likewise be the duty of the Commissioners' Court, by its order duly made and entered of record at its first regular meeting in January of each calendar year, to determine whether county officers of such county (excluding county surveyors, registrars of vital statistics and notaries public) shall be compensated for the fiscal year on the basis of an annual salary or whether they shall be compensated on the basis of fees earned by them in the performance of their official duties, and it shall also be the duty of the county clerk to forward to the Comptroller of Public Accounts of the State of Texas, on or before the 31st day of January, a certified copy of said order of said Commissioners' Court.

"Sec. 17 (a) The term 'Precinct Officers' as used in this Act means justices of the peace and constables . . ."

Article 3898, V. C. S.:

"The fiscal year, within the meaning of this Act, shall begin on January 1st of each year; and each district, county and precinct officer shall file his report and make the final settlement required in this Act not later than February 1st of each year; provided, however, that officers receiving an annual salary as compensation for their services shall, by the close of each month, pay into the Officers' Salary Fund or funds, all fees, commissions and compensation collected by him during said month. Whenever such officer serves for a fractional part of the

fiscal year, he shall nevertheless file his report and make final settlement for such part of the year as he serves and shall be entitled to such proportionate part of his compensation as the time for his service bears to the entire year."

It was held in Attorney General's Opinion No. 0-5061 that "Section 2 of Article 3912e, V. A. C. S., requires the Commissioners Court of every county in Texas at its first regular meeting in January of each year to determine whether certain precinct officers shall be placed on a salary or fee basis."

It was held in Attorney General's Opinion No. 0-6462 that the Commissioners' Court of a county under 20,000 population could place its county officials on a salary basis at its first regular meeting in January and not subsequent thereto. We quote the following from that opinion:

"Under the provisions of Article 3898, the fiscal year of a county begins on January 1st of each year. We think that it was contemplated by the provisions of Section 2, Article 3912e, that during the month of January, the commissioners' court should have determined whether the designated county officers would be compensated on a fee or salary basis, whereby said officers could account for and dispose of the fees of office accordingly, in the manner provided in Article 3898. When the commissioners' court has determined that county officers shall be paid on an annual salary basis, we think that it was contemplated that such annual salary should be paid for the fiscal year, beginning January 1st, in twelve equal installments. We do not think it was within the contemplation of this Act that county officers should be compensated on a fee basis for a part of a year, and, for the remaining portion of said year, be compensated on a salary basis. If it were determined that county officers should be paid on the basis of an annual salary, in any month later than January of any fiscal year, it would be impossible to comply with these provisions as to fixing salaries on an

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annual basis and paying same in twelve equal installments for that fiscal year."  
(Emphasis ours)

In view of the foregoing and after carefully considering all the pertinent statutory provisions, it is our opinion that the holding in Attorney General's Opinion No. 0-6462 is equally applicable to precinct officers and we find no authority for the Commissioners' Court to determine whether precinct officers shall be paid on a fee or salary basis at any time other than at its first regular meeting in January of each year.

You are, therefore, advised that the salary of a constable of a county of more than 20,000 population cannot be fixed in any one year at any time later than at the first regular meeting in January of the Commissioners' Court.

SUMMARY

The Commissioners' Court in a county of more than 20,000 population does not have the authority to place precinct officers on an annual salary basis at any time later than at its first regular meeting in January of each year. Article 3912e, Sec. 2.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By   
John Reeves  
Assistant

JR:mv

APPROVED:

  
FIRST ASSISTANT  
ATTORNEY GENERAL