



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

June 25, 1948

Hon. Weldon B. Davis
County Attorney
Austin County
Bellville, Texas

Opinion No. V-617

Re: Legality of defraying
the expenses of em-
ploying a county nurse
from the jury fund.

Dear Sir:

Your request for our opinion on the above sub-
ject matter is, in part, as follows:

"The Commissioners Court of Austin County, Texas, has been requested by some of the county citizens to employ a graduate registered nurse to visit public schools in the county and to investigate health conditions and sanitary surroundings of such schools, etc., all as provided under Article 4528a, R. C. S. of Texas. Section 3 of the same article provides that the Commissioners Court shall be empowered to appropriate from funds of the respective counties, the necessary money to cover the salary of such nurse, not to exceed \$1800.00 a year for any one nurse, and in addition thereto, the Commissioners Court may appropriate additional funds to cover the expenses of such nurse incurred in the visiting of schools, etc.

"You will notice that Section 3 above mentioned of Article 4528a, provides 'from any funds of the respective counties', Article 8, Section 9, of our State Constitution provides, among other provisions of such section, that a county, city or town may levy a tax of not to exceed fifteen cents on the \$100.00 valuation to pay jurors.

"Question: Since Section 3, Arti-

cle 4528a above referred to, uses the words 'from any funds of the respective counties', could the Commissioners Court legally levy a two per cent jury tax to defray the expenses necessary for the employment of a county nurse?"

Article 4528a, V. C. S. provides:

"Sec. 1. That the Commissioners Court of the various Counties in the State of Texas shall have the authority, when in their judgment it shall be deemed to be necessary or advisable, to employ one or more Graduate Registered nurses whose duty it shall be to visit the public schools in the county in which they are employed, and to investigate the health conditions and sanitary surroundings of such schools, and the personal, physical and health condition of pupils therein, and to co-operate with the duly organized Board of Health and local health authorities in general public health nursing and perform such other and further duties as may be required of them by the Commissioners Court.

"Sec. 2. That said nurses when so appointed shall be employed on a monthly salary to be fixed by the Commissioners Court and shall at all times be subject to removal by the Commissioners Court without prior notice.

"Sec. 3. The Commissioners Court shall be empowered to appropriate from any funds of the respective Counties the necessary money to cover the salary of such nurses, not to exceed the sum of \$1,800.00 to each nurse, and in addition thereto may appropriate additional funds to cover all expenses that may be proper and necessary in the visiting of such schools, and General Public Health Nursing including transportation and other incidental expenses."

Article VIII, section 9 of the Texas Constitu-

tion provides the maximum rate of taxes for county purposes, for roads and bridges, for permanent improvements and for juries. The courts have repeatedly held that the Commissioners' Court cannot transfer these constitutional funds and it cannot spend tax money for one purpose raised ostensibly for another purpose. See *Ault v. Hill County*, 116 S.W. 359, and *Carroll v. Williams*, 202 S.W. 504.

We quote the following from Attorney General's Opinion No. V-332:

"Article VIII, Section 9, authorizes the levy of a tax 'not exceeding fifteen (15) cents to pay jurors.' In construing Article VIII, Section 9, the courts have uniformly held that the provisions of this Section of the Constitution 'were designed, not merely to limit the tax rate for certain therein designated purposes, but to require that any and all money raised by taxation for any such purpose shall be applied, faithfully, to that particular purpose, as needed therefor, and not to any other purpose or use whatsoever.' *Carroll v. Williams*, 202 S.W. 504, 506. See also *Ault v. Hill County*, 102 Tex. 335, 116 S.W. 359.

"The Jury Fund of the county is a constitutional fund composed of tax money levied for the sole purpose of paying jurors. The Legislature is therefore prohibited by Article VIII, Section 9, from authorizing such tax levy to be used for any other purpose than 'to pay jurors.' Therefore, it is our opinion that the portion of Section 3 of H. B. 683, Acts of the 50th Legislature, authorizing the Commissioners Court to pay the salaries of the investigators or assistants and stenographers out of the Jury Fund is unconstitutional and void."

Since the jury fund of the county is composed of tax money levied for the sole purpose of paying jurors, and in view of the foregoing authorities, it is our opinion that no portion of the jury fund can be used to defray the expenses necessary for the employment of a registered nurse to visit public schools in

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the county.

SUMMARY

No portion of the jury fund may be expended for the purpose of employing a registered nurse to visit public schools in the county. Article VIII, Section 9, of the Texas Constitution.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

JR:erc:mw

By *John Reeves*
John Reeves
Assistant

APPROVED:

Fagan Dickson
FIRST ASSISTANT
ATTORNEY GENERAL