



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL  
ATTORNEY GENERAL**

August 6, 1948

Hon. Jean Day  
County Attorney  
Henderson County  
Athens, Texas

Opinion No. V-655

Re: Allowance to a sheriff of  
15¢ per day for safe-keep  
of prisoners.

Dear Sir:

We refer to your letter in which you submit  
the following:

"The Sheriff of Henderson County has  
filed a sworn account with the Commission-  
ers' Court of Henderson County under the  
above Section of the Statute and requested  
that he be paid the sum of 15¢ per day for  
the safe-keep of each of the prisoners who  
have been in his custody for the past three  
months. The Commissioners' Court of Hender-  
son County has refused to pay the Sheriff's  
account for the reason as stated by them  
that they are paying the salary of a full-  
time jailer, who is in charge of the Hen-  
derson County Jail and the prisoners kept  
therein.

"Under the facts stated above, is the  
Commissioners' Court of Henderson County  
justified in refusing the payment of the  
Sheriff's account for the safe-keep of pris-  
oners as provided under Section 1 of said  
Article 1040?"

Section 61, Article XVI of the State Consti-  
tution reads in part:

"All district officers in the State  
of Texas and all county officers in coun-  
ties having a population of 20,000 or more,  
according to the then last preceding Fed-  
eral Census, shall from the first day of

January and thereafter, and subsequent to the first Regular or Special Session of the Legislature after the adoption of this Resolution, be compensated on a salary basis."  
(Emphasis added)

Henderson County has a population of 31,822, and, therefore, compensates its officers on a salary basis.

Section 13 of Article 3912e of Vernon's Civil Statutes reads in part:

"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 (12) equal installments 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. . . ."

Section 1 of said Article reads:

"No district officer shall be paid by the State of Texas any fees or commission for any service performed by him; nor shall the State or any county pay to any county officer in any county containing a population of twenty thousand (20,000) inhabitants or more according to the last preceding Federal Census any fee or commission for any service by him performed as such officer; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the

benefit of the Officers' Salary Fund or funds hereinafter provided for, all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such monies received by him into the fund or funds created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the payment of costs in civil cases by the State, but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act to account for fees, commissions and costs collected from private parties."

Section 22 reads:

"The provisions of this Act shall be cumulative of all laws not in conflict herewith. It is hereby declared to be the intention of the Legislature that the compensation, limitations and maximums fixed in this Act for the named officers, their deputies, assistants and employees control over any other provisions contained in all law, general and special."

In *Nueces County v. Currington*, 139 Tex. 297, 162 S. W. (2d) 687, the Supreme Court copied pertinent parts of Articles 3883, 3891, 3912e and other appropriate laws in Vernon's Civil Statutes, and construed same in connection with Section 61 of Article XVI of the State Constitution, as follows:

". . . The compensation, limitations and maximums herein fixed shall also apply to all fees and compensation whatsoever collected by said officers in their official capacity, whether accountable as fees of office under the present law, (or not) and any law, general or special, to the contrary is hereby expressly repealed. The only kind and character of compensation exempt from the provisions of this Act shall be rewards received by Sheriffs \* \* \* Pursuant to the constitutional mandate

the legislature passed and approved (November 15, 1935) a comprehensive act prescribing in the manner therein stated the compensation of district, county and precinct officers. Sec: 1, Acts 44th leg., 2nd C. S., ch. 465, p. 1762, now sec. 1, art. 3912e, Vernon's Ann. Civ. St. The act carries by recitation (sec. 24) the legislative interpretation that the amendment made 'it mandatory that constitutional county officers in counties having a population of twenty thousand (20,000) inhabitants or more, \* \* \* be compensated solely on a salary basis \* \* \* (Italics ours)." (Underscored words are in italics by the Court)

In view of the foregoing we are of the opinion that the provisions of Section 1, Article 3912e, V.C.S., prohibit the Commissioners' Court of a salary county from paying the sheriff the 15¢ per day for the safe-keep of each prisoner as provided in Article 1040, V.C.C.P. Article 1040 was passed in 1923 when all the county officers in this State were compensated on a fee basis. In 1935 the voters of this State adopted Article XVI, Section 61 of the Texas Constitution which made it mandatory that all the county officers in counties having a population of 20,000 or more according to the last preceding Federal Census be compensated on a salary basis beginning January 1, 1936, and subsequent to the adoption of this constitutional amendment the Legislature enacted Section 1 of Article 3912e, which superseded the provisions of Subdivision 1, Article 1040, V. C. C. P. relative to county officers compensated on a salary basis.

SUMMARY

The provisions of Section 1, Article 3912e, V. C. S. prohibit the Commissioners' Court of a salary county from paying the sheriff 15¢ per day for the safekeep of each prisoner.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

APPROVED:

*Fagan Dickson*

FIRST ASSISTANT  
ATTORNEY GENERAL

WTW:wb

By *W. T. Williams*  
W. T. Williams  
Assistant