



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

**PRICE DANIEL
ATTORNEY GENERAL**

January 28, 1949

Hon. Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Opinion No. V-762

Re: Eligibility of a County which comes within subsection 15(a) of Article 3912e, in January, 1949 to participate in the appropriation contained in Item 11, H.B. 244, for the remainder of the current biennium.

Dear Sir:

Your request for an opinion, in part, reads:

"At the present time there are six counties in this State under 20,000 in population which have a County Attorney performing the duty of a District Attorney and the compensation of all of the county officers in these counties is their fees of office.

"This department has been placed on notice by the officials of one of these counties that the county officers would be compensated on a salary basis beginning January 1, 1949. This county will be eligible for the apportionment under the provisions of Article 3912e, Section 15, Sub-section (a) page 286 of Vernon's Civil Statutes.

"Should this department make this apportionment from the amount appropriated by House Bill Number 244, Chapter 338, Section 11, \$146,429, page 645, General and Special Laws of the 50th Legislature, for the period January 1, 1949 to August 31, 1949, inclusive? Or should this department make the apportionment by a transfer from the appropriation in Section 9, \$60,000, of the above bill to the apportionment appropriation for this apportionment in Section 11, if so, would the amount transferred be the maximum amount due such county, or would the fact that

the counties now eligible for the apportionment from the \$146,429 receive only 56% of the maximum amount due them have to be considered in making this transfer? Or would it be necessary for a supplemental appropriation to be made before this apportionment could be accomplished?

"With regard to the above questions reference is made to your opinion Number 0-6652, questions Numbers 1 and 4 and the answers thereto."

Section 6(a) of Article 3912e, V.C.S., in part, reads:

". . . It shall be the duty of the Comptroller of Public Accounts to annually apportion to all counties in which the county officers are to be compensated on the basis of a salary any monies, appropriated for said year for such apportionment; each county entitled to participate in such apportionment shall receive for the benefit of its Officers' Salary Fund or funds its proportionate part of the appropriation which shall be distributed among the several counties entitled to participate therein on the basis of the per capita population of each county, according to the last preceding Federal Census. . ." (Emphasis added).

Section 15 of Article 3912e, V.C.S., in part, and subsection (a) thereof respectively read as follows:

"The Commissioners' Court in counties having a population of less than twenty (20,000) inhabitants, according to the last preceding Federal Census at the first regular meeting in January of each calendar year, may pass an order providing for compensation of all county and precinct officers on a salary basis. The Commissioners' Court in each of such counties is hereby authorized, and it shall be its duty, to fix the salaries of Criminal District Attorneys. In the event such Court passes such order they shall pay to each of said District and County officers in money an annual salary in twelve (12)

equal installments of not less than the total sum earned as compensation by said officer in his said official capacity for the fiscal year of 1935 and not more than the maximum allowed such officer under laws existing August 24th, 1935. . ."

(a). The compensation of a Criminal District Attorney, or County Attorney who performs the duties of District Attorneys, together with the compensation of his assistants, shall be paid out of the County Officers' Salary Fund, but the State shall pay into such fund each year an amount equal to a sum which bears the same proportion to the total salary of such Criminal District Attorney, or County Attorney performing the duties of a District Attorney, together with the salary of his assistants, as all felony fees collected by such official during the year of 1935 bear to the total fees collected by such official during such year."

The provisions of subsection (a), supra, are also contained in subsection (b), section 13, of Article 3912e, V.C.S., which is applicable to all those counties having a population of 20,000 or more and less than 190,000 according to the last preceding Federal Census. The county officers of all such counties are compensated on a salary basis. (Sec. 61, Art. XVI, Const.)

Items 9, 10 and 11 of the appropriations made to the Comptroller's Department for the current fiscal year (Acts 50th Leg., H. B. 244, p. 645) respectively read as follows:

"9. Fees and costs of sheriffs, attorneys and clerks in felony cases, and fees of county judges, county attorneys, justices of peace, sheriffs and constables in examining trials where indictments are returned \$ 60,000.00

"10. Apportionment to counties where county officers are paid salaries (per Chapter 465, Section 6A, Second Called Session, Acts Forty-fourth Legislature). Should any county, by election of the Commissioners Court, change from salary to fee basis or vice versa, the Comptroller shall make adjustment in the appropriations by transferring the correct amount from appropriation made for fees and costs of sheriff and other county officials to appropriation to pay counties on a per capita basis or vice versa as the case may be 514,000.00

"11. Apportionment to counties where county officers are paid salaries and where there is a criminal district attorney or county attorney performing the duties of district attorney (As per sub-section B, Section 13 and Section 15, sub-section A, Chapter 465, Acts Forty-fourth Legislature) 146,429.00"

Item 9 is primarily an appropriation to pay the officers named therein of counties in which all county officers are compensated on a fee basis for particular services rendered the State as provided by the statutes.

Item 10 is an appropriation for the benefit of all counties wherein all county officers are compensated on a salary basis. It was made by the Legislature in obedience to the provisions of Section 6(a) of Article 3912e. However, since the Commissioners' Court of any county having a population of less than 20,000 has been authorized by Section 15 to determine at its first regular meeting in January of each calendar year whether all county officers shall be for that year compensated on a fee or salary basis, the Legislature has provided in Item 10 for the Comptroller to transfer from Item 9 to Item 10 or vice versa in the event such changes are made. Section 6(a) requires this appropriation to be apportioned among the counties entitled to participate therein "on the basis of the per capita population of each county according to the last preceding Federal Census."

The appropriation made by Item 11 is to pay all those counties which come within the classifications described in subsection (b) of Section 13 and subsection (a) of Section 15, and must be apportioned by the Comptroller to each county in accordance with the formula prescribed therein. In other words, any county, regardless of its population, is eligible to participate in the distribution of this appropriation, provided its county officers are compensated on a salary basis and which has a criminal district attorney or a county attorney performing the duties of a district attorney. The purpose of this appropriation is wholly unrelated to the purposes of the appropriations contained in Items 9 and 10. The authority conferred upon the Comptroller to make adjustment in these two appropriations cannot be extended by construction to include the appropriation in Item 11.

We have examined all appropriations heretofore made by the Legislature for distribution to counties in accordance with the provisions of Section 6(a) and subsection (b), Section 15, of Article 3912e, and have found that each appropriation made prior to the appropriation made by the 50th Legislature limited the number of counties eligible to participate in each such appropriation to thirty-three. The current appropriation (Item 11) is not so limited.

You have informed us that the 50th Legislature discovered that there were six additional counties having a population of less than 20,000 inhabitants according to the last census in which the county officers were compensated on a fee basis and having either a criminal district attorney or a county attorney performing the duties of a district attorney. Therefore, it appears the Legislature realized the probability of one or more of these counties becoming eligible during the current biennium to participate in the distribution of this appropriation and for that reason did not limit the appropriation to any number of counties, thereby enabling such county or counties to participate therein.

In view of the foregoing, it is our opinion that when a county of less than 20,000 inhabitants in which the county officers have heretofore been compensated on a fee basis and which has a criminal district attorney or a county attorney performing the duties of a district attorney, changes its method of compensating its county officers

from a fee basis to a salary basis in January, 1949, it is entitled to receive its proportionate part of the appropriation in Item 11 (Acts 50th Leg., H.B. 244, ch. 338, p. 645) for the remaining eight months of the current biennium.

You have directed our attention to Opinion No. 0-6652. The appropriations and the statutes governing the distribution thereof considered in that opinion are entirely different from the appropriation in Item 11 and the statutes governing its distribution.

SUMMARY

When a county which has a criminal district attorney or a county attorney performing the duties of a district attorney transfers its county officers from a fee basis to a salary basis in January, 1949, it is entitled to receive its proportionate part of the appropriation in Item 11 (Acts 50th Leg., H. B. 244, ch. 338, p. 645) for the remaining eight months of the current biennium. Sub-section 15(a) of Art. 3912a, V. C. S.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

Bruce W. Bryant

By

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APPROVED:

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