



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

April 21, 1953

Hon. Sam H. Burris
County Attorney
Jim Wells County
Alice, Texas

Letter Opinion No. MS-24

Re: Authority of the District
Attorney to determine when
it is necessary and desir-
able to appoint a grand
jury bailiff and the duty
of the commissioners' court
to authorize payment for
services rendered by a
bailiff so appointed.

Dear Sir:

You have asked us the following questions:

"1. May the District Attorney, under Article 367B, CCP, appoint any person a Grand Jury Bailiff he so desires when the Sheriff's Department is adequately staffed to perform the duties of Grand Jury Bailiffs?

"2. Is it mandatory, under Article 1058, CCP, that Commissioners Court of a county pay a Grand Jury Bailiff by designating what fund, even though the Sheriff's Department summons the witnesses for the Grand Jury?"

Jim Wells County has a population of 27,991 inhabitants according to the last preceding Federal census.

Article 367, Vernon's Code of Criminal Procedure, states in part:

"The court [district] may appoint one or more bailiffs to attend upon the grand jury.
. . ."

Chapter 67, Acts 40th Legislature, Regular Session, 1927, page 93, is applicable to counties of a population of 150,000, or more, and is codified as 367b, Vernon's Code of Criminal Procedure and 326f, Vernon's Civil Statutes.

Article 367b, Vernon's Code of Criminal Procedure states in part:

"The District Attorney may appoint one or more bailiffs to attend upon the Grand Jury. . ."

In construing Articles 367 and 367b, Vernon's Code of Criminal Procedure, this office held in Attorney General's Opinion O-1124 (1939), a copy of which is enclosed:

"This department held on January 7, 1935, that Article 367b did not repeal Article 367, but that Article 367b applied to counties having a population of more than 150,000 inhabitants, and that Article 367 applied to counties having a population of less than 150,000 inhabitants."

The District Attorney of a county having a population of less than 150,000 inhabitants does not have the authority to appoint grand jury bailiffs. In the event he attempts to make such appointments they are void and Commissioners Court is without authority to pay for their services.

In connection with appointing a member of the Sheriff's department as grand jury bailiff; this office held in Attorney General's Opinion O-373 (1939), a copy of which is enclosed, that a deputy sheriff is prohibited by the Constitution of Texas from serving and accepting pay as bailiff to the grand jury.

In regard to your second question this office held in Attorney General's Opinion V-332 (1947), a copy of which is enclosed:

"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.'"

Compensation for a grand jury bailiff can not be paid from the jury fund. Therefore, the only fund available under the statutes is the general fund of the

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county. This situation relieves the commissioners court from duty of determining which fund the compensation for payment of grand jury bailiffs shall come from.

Further, it is mandatory under Article 1058, Vernon's Code of Criminal Procedure, that the commissioners court pay claims of legally appointed grand jury bailiffs, if same are in proper form.

In connection with your opinion request we call your attention to the provisions of Article 368, Vernon's Code of Criminal Procedure, which provides in part as follows:

"A bailiff is to obey the instructions of the foreman, to summon all witnesses, and, generally to perform all such duties as the foreman may require of him. . ."

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By
Sam C. Ratliff
Assistant

SCR:am:wb

Encls.