



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

August 28, 1953

Hon. F. H. Richards  
District Attorney  
69th Judicial District  
Dalhart, Texas

Letter Opinion No. MS-91

Re: Retroactive character of Chapter 322, Acts 53rd Legislature, allowing a county judge, who is ex-officio county superintendent, additional compensation.

Dear Mr. Richards:

Your request for an opinion is, in part, as follows:

"Judge Schloss took office as County Judge of Deaf Smith County, January 1, 1953. He is paid upon a salary basis. He received his salary as ex-officio county school superintendent for January, '53 and deposited this money in a separate account in a bank in Hereford until he could determine whether he is entitled to keep the same as additional compensation or whether the same should be paid to the County Salary Fund."

Your question concerns the retroactive character of Senate Bill 71 of the 53rd Legislature, which was enacted as Chapter 322, Acts 53rd Legislature, 1953, which authorizes an additional compensation of \$2600 to the county judge while acting as ex-officio county superintendent. The county officers of your county are compensated on a salary basis.

You specifically point out the following language of Section 3 of the above act:

". . . The salary of the ex-officio superintendent of public instruction, the salary of the assistant ex-officio superintendent of public instruction and the office and traveling expenses for the office of the ex-officio superintendent in all counties in Texas shall be from and after September 1, 1947, paid from the State and County Available School Fund, and shall be received and retained in addition to all other compensation provided by law whether the county judge is compensated on a fee or salary basis." (Emphasis added)

Hon. F. H. Richards, page 2 (MS-91)

The underlined portion of the above statute refers to the fund from which the salaries are paid. This portion of the statute is merely a re-enactment of Article 2701, Vernon's Civil Statutes, as it was passed in 1947. By such re-enactment the Legislature did not attempt to make the present law retroactive. To construe this portion of the statute otherwise would be to render it unconstitutional.

Section 16 of Article I of the Constitution of Texas provides, in part:

"No bill of attainder, ex post facto law, retroactive law, . . . shall be made." (Emphasis added.)

Section 53 of Article III of the Constitution of Texas provides, in part:

"The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, . . . after service has been rendered . . ."

This office held in Opinion V-1262 (1951) that the compensation provided in Article 3888, Vernon's Civil Statutes, to a county judge acting as ex-officio county superintendent could not be retained by the county judge in addition to the salary set by the commissioners' court.

Section 6 of Chapter 322 provides:

"Sec. 6. This act shall become operative on the first day of the month immediately succeeding the effective date hereof."

The effective date of this Act is August 26, 1953. Therefore, the Act will become operative on September 1, 1953. Att'y Gen. Op. S-78 (1953).

In view of the foregoing it is our opinion that Chapter 322 is not retroactive and compensation received by a county judge acting as ex-officio county superintendent prior to September 1, 1953, the operative date of Chapter 322, must be deposited in the County Officers' Salary Fund.

Yours very truly,  
JOHN BEN SHEPPERD  
Attorney General

WMK:am:wb

By William M. King, Assistant