



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

April 7, 1953

Hon. Reagan S. Wyche Opinion No. S-25

County Attorney *Auditor*

Gregg County
Longview, Texas

Re: Legality of paying the Criminal District Attorney of Gregg County \$500.00 per year from State funds in accordance with Section 21 of Article V, Constitution of Texas.

Dear Sir:

You have requested an opinion on the following question:

"Is the Criminal District Attorney of Gregg County entitled to receive from the Comptroller of the State of Texas the five hundred dollar (\$500.00) constitutional fee?"

Section 21 of Article V of the Constitution of Texas reads in part as follows:

". . . district attorneys shall receive an annual salary of five hundred dollars, to be paid by the State, and such fees, commissions and perquisites as may be provided by law. . ."

The constitutional office of Criminal District Attorney for Gregg County was created by the Legislature in 1931. Article 199, paragraph 124, V.C.S.; Neal v. Sheppard, 209 S.W.2d 388 (Tex.Civ.App. 1948, error ref.). In Hill County v. Sheppard, 142 Tex. 358, 178 S.W.2d 261 (1944) the Supreme Court held that the constitutional office of Criminal District Attorney was entitled to receive an annual salary of \$500 from the State as provided in Section 21 of Article V of the Constitution of Texas, stating:

". . . it is our opinion that the term criminal district attorney refers to a class or kind of district attorneys, and that a

criminal district attorney is a district attorney within the meaning of the Constitution.

"The office of District Attorney, including that of criminal district attorney, is a constitutional office, the duties and compensation of which are provided for in Article V, Section 21, of the Constitution above quoted. Under that section of the Constitution the district attorney is entitled to 'receive an annual salary of five hundred dollars, to be paid by the State, and such fees, commissions, and perquisites as may be provided by law.'"

In view of the foregoing you are advised that the Criminal District Attorney of Gregg County is entitled to receive an annual salary of \$500 from the State.

Although Chapter 499, Acts of the 52nd Legislature, Regular Session, 1951, page 1228 appropriates money for the payment of "Salaries, including the \$500 Constitutional Allowance of 54 District Attorneys at \$5,500 per year," the Legislature has not made available any appropriation for the payment of the constitutional allowance for Criminal District Attorneys. Therefore, the constitutional allowance cannot be paid at this time.

SUMMARY

The Criminal District Attorney for Gregg County is entitled to receive an annual salary of \$500 from the State as provided in Section 21 of Article V of the Constitution of Texas. However, no appropriation is available at this time for the payment of such salary.

APPROVED:

J. C. Davis, Jr.
County Affairs Division

C. K. Richards
Reviewer

Robert S. Trotti
First Assistant

John Ben Shepperd
Attorney General

JR:am

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By *John Reeves*
John Reeves
Assistant