



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

April 27, 1973

The Honorable Lynn Cooksey
Criminal District Attorney
Bowie County
412 Texas Boulevard
Texarkana, Texas 75501

Opinion No. H- 35

Re: Questions concerning
salaries, expenses and
removal of justices of
the peace.

Dear Mr. Cooksey:

Your request for our opinion poses the following questions:

1. Is the Commissioners Court of Bowie County limited by Article 3912i, Vernon's Annotated Civil Statutes, in setting justices' of the peace salaries beginning January 1, 1973, or does Article 3912k, Vernon's Annotated Civil Statutes, apply?
2. Does Article 3936f-1, Vernon's Annotated Civil Statutes, limit the amount of fees that a justice of the peace in Bowie County, paid on a fee basis, can retain as his compensation for the year of 1972, or does Article 3912k, Vernon's Annotated Civil Statutes, apply?
3. Can the Commissioners Court of Bowie County provide a secretary for a justice of the peace under the provisions of Article 3912k, Vernon's Annotated Civil Statutes?
4. Can the Commissioners Court take any affirmative action to remove a justice of the peace who has not satisfied the requirements of Article 5972(b), Vernon's Annotated Civil Statutes, or withhold payment of his compensation absent an adjudication of incompetency and removal by a district court judge?

The scope of Article 3912k, V. T. C. S. (Acts 1971, 62nd Leg., Ch. 622, p. 2019) is set forth in § 1 which provides:

"Except as otherwise provided by this Act and subject to the limitations of this Act, the commissioners court of each county shall fix the amount of compensation, office expense, travel expense, and all other allowances for county and precinct officials and employees who are paid wholly from county funds, but in no event shall such salaries be set lower than they exist at the effective dates of this Act."

The office of justice of the peace is a precinct office (Article 5, § 18, Texas Constitution), and is therefore covered by Article 3912k unless otherwise excepted by § 7, subsection 4 which excepts:

". . . judges of all courts of record and all justices of the peace, and presiding judges of commissioners courts in counties having a population of 1, 700, 000 or more, according to the last preceding Federal census."

Section 8 of Article 3912k provides:

"To the extent that any local, special or general law, including Acts of the 62nd Legislature, Regular Session, 1971, prescribes the compensation, office expense, travel expense, or any other allowance for any official or employee covered by this Act, that law is repealed."

It is our opinion that the Commissioners Court of Bowie County, in setting justices' of the peace salaries beginning January 1, 1973, is governed by the provisions of Article 3912k, and not Article 3912i.

As to your second question, § 9 of Article 3912k, Vernon's Annotated Civil Statutes, provides that the Act was effective January 1, 1972. In conjunction with the discussion above, it is therefore our conclusion that

Article 3912k, and not Article 3936f-1, determines the compensation of a justice of the peace in Bowie County during 1972 and thereafter.

With reference to your third question, Article 3912k provides for the Commissioners Court to establish the amount of office expense for justices of the peace and others but a secretary is not an office expense. Casey v. State, 289 S. W. 428 (Tex. Civ. App., Texarkana, 1926, err. ref.). It provides for compensation, but does not in itself authorize the establishment of any office or position. However, Article 3902 does allow the Commissioners Court to authorize an assistant. Once such an assistant has been authorized, his compensation should be set in accordance with Article 3912k, which covers "county and precinct officials and employees." (Section 1, *supra*).

With reference to removal of a justice of the peace, Article 5, § 24 of the Constitution of the State of Texas provides as follows:

"County judges, county attorneys, clerks of the District and County Courts, justices of the peace, constables, and other county officers, may be removed by the Judges of the District Courts for incompetency, official misconduct, habitual drunkenness, or other causes defined by law, upon the cause therefor being set forth in writing and the finding of its truth by a jury."

In Childress County v. Sachse, 310 S. W. 2d 414 (Tex. Civ. App., Amarillo, 1958) writ ref., n. r. e., 312 S. W. 2d 380 (Tex. 1958), the court held:

"Where the State Constitution prescribes the manner of removing a public official, neither the Legislature, Executive officers nor the Judiciary can act beyond the limitations of the Constitution. Travelers' Ins. Co. v. Marshall, 124 Tex. 45, 76 S. W. 2d 1007, 96 A. L. R. 802.

"In compliance with the provisions of the State Constitution, however, the Texas Legislature has passed laws for the removal of county officers from

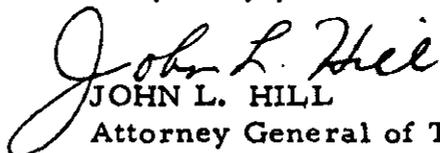
office and has prescribed the methods for removing them if and when desired. Arts. 5970 - 5997, both inclusive. Such a procedure must be sworn to and conducted in the name of the State of Texas, heard in the proper district court with the charges set forth in writing and the truth of such found by a jury. . . ." (310 S. W. 2d at 419)

It is therefore our opinion that a justice of the peace who has not satisfied the requirements of Article 5972(b), Vernon's Annotated Civil Statutes, may be removed only in accordance with the applicable constitutional and statutory provisions, and that the Commissioners Court is without authority to take any affirmative action to remove a justice of the peace or to withhold payment of his compensation, absent an adjudication of incompetency and removal by a district court judge.

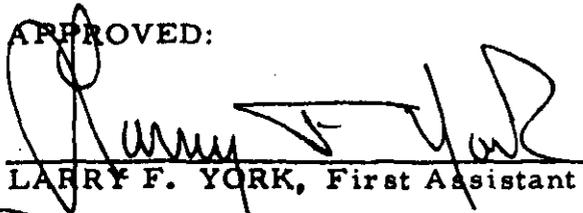
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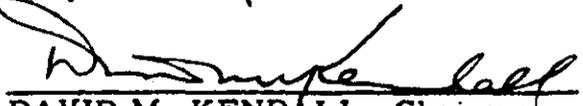
Article 3912k, V. T. C. S., effective as of January 1, 1972, is the statute by which the compensation and expenses of a justice of the peace of Bowie County and his clerks and assistants, are to be determined by the Commissioners Court, which has no authority to remove a justice of the peace from office.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee