



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

October 14, 1944

Honorable E. L. Hinson, Jr.
County Auditor, Polk County
Livingston, Texas

Dear Sir:

Opinion No. 0-6223

In Re: Can salaries of county officials be raised after once being set under the salary law? Can county officers make changes within the objects covered by the budget? Reports of Sheriff for mileage of personal automobile used for official business.

We have received your opinion request of recent date and quote from same as follows:

"(1) Under the Officers Salary Fund Law, where a county of a population of Polk County which is 20,000 plus, and the salaries of the county officials were set at the time the county began under the Officers Salary Fund according to the law, can the Commissioners' Court raise the salary of any official of the County?

"(2) When the Budget is set and approved by the Commissioners Court for each officer of the county and each office has its budget itemized as postage, deputy hire, bond premium, car allowance, must the county official stay within his budget as itemized or stay within it as a Grand Total? I mean by this, if a certain amount is set aside for deputy hire, can he only spend that amount for deputy hire or can he spend his whole grand total budget just for deputy hire if he wishes?

"(3) Where the sheriff receives 4¢ per mile for cars for county business, can the county auditor require him make a daily mileage report on forms furnished by the auditor showing all personal mileage and all mileage for county and to be reported to the auditor each month before he gets his pay?"

Our answer to your Question No. 1 is as follows:

The Commissioners' Court has the right and authority to fix the salaries of the officers named in Section 13, Art. 3912e, at any amount not less than the total sum earned as compensation by the officer in his official capacity for the fiscal year 1935, and not more than the maximum amount allowed such officer under laws existing on August 24, 1935, and when such salaries have once been fixed by the Commissioners' Court for said officers, they cannot be changed during that year; however, the Commissioners' Court may change the salaries of said officers for the following year, provided such salaries are not less than the total sum earned as compensation by the officer in his official capacity for the fiscal year 1935; and not more than the maximum amount allowed such officer under laws existing on August 24, 1935. Answering your question specifically, if such salaries are not now set at the maximum amount allowed such officer under laws existing on August 24, 1935, they can be raised to such maximum amount for the year 1945.

For further information on this question, including the text of pertinent statutes, see attached copies of our opinions, Nos. 0-1595, 0-4226, and 0-5746.

In consideration of your Question No. 2, we point out the following:

Article 689a-9, Vernon's Annotated Civil Statutes, provides, in part, as follows:

"The County Judge shall serve as budget officer for the Commissioners' Court in each county, and during the month of July of each year, he, assisted by the County Auditor or by the County Clerk, shall prepare a budget to cover all proposed expenditures of the county government for the succeeding year. Such budget shall be carefully

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itemized so as to make as clear a comparison as practicable between expenditures included in the proposed budget and actual expenditures for the same or similar purposes for the preceding year. The budget must also be so prepared as to show as definitely as possible each of the various projects for which appropriations are set up in the budget and the estimated amount of money carried in the budget for each of such projects. . . ."

Article 689a-11, V. A. C. S., provides, in part, as follows:

"The Commissioners' Court in each county shall each year provide for a public hearing on the county budget -- which hearing shall take place on some date to be named by the Commissioners' Court subsequent to August 15th and prior to the levy of taxes by said Commissioners' Court. Public notice shall be given that on said date of hearing the budget as prepared by the County Judge will be considered by the Commissioners' Court. Said notice shall name the hour, the date and the place where the hearing shall be conducted. Any taxpayer of such county shall have the right to be present and participate in said hearing. At the conclusion of the hearing, the budget as prepared by the County Judge shall be acted upon by the Commissioners' Court. The Court shall have authority to make such changes in the budget as in their judgment the law warrants and the interest of the taxpayers demand. When the budget has been finally approved by the Commissioners' Court, the budget, as approved by the Court, shall be filed with the Clerk of the County Court, and taxes levied only in accordance therewith, and no expenditure of the funds of the county shall thereafter be made except in strict compliance with the budget as adopted by the Court. Except that emergency expenditures, in case of grave public necessity, to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget, may from time to time be authorized by the Court as amendments to the original budget. In all cases where such amendments to the original budget is made, a copy of the order of the Court amending the budget shall be filed with the Clerk of the County Court, and attached to the budget originally adopted..."

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Article 689a-20, V. A. C. S., provides as follows:

"Nothing contained in this Act shall be construed as precluding the Legislature from making changes in the budget for State purposes or prevent the County Commissioners' Court from making changes in the budget for county purposes or prevent the governing body of any incorporated city or town from making changes in the budget for city purposes, or prevent the trustees or other school governing body from making changes in the budgets for school purposes; and the duties required by virtue of this Act of State, County, City and School Officers or Representatives shall be performed for the compensation now provided by law to be paid said officers respectively. Acts 1931, 42nd Leg., p. 339, ch. 206, § 20a."

In the case of Southland Ice Co., vs. City of Temple, 100 Fed. (2) 825, decided by the Fifth Circuit Court of Appeals, in which such budget law is involved, the following was said:

"... subdivision 20 of the Budget Law (Art. 689a-20, V. A. C. S., supra) authorizing changes in the budget, must refer to changes within the objects covered by the budget, because if new matters could be added to the budget, then the emergency provision would serve no purpose." (Underscoring and matter within parenthesis added).

In view of the above, our answer to your Question No. 2 is that the County Commissioners' Court is authorized to make changes within the objects covered by the budget for county purposes. The county officer, for whose office such budget was made, would have no authority to make such changes. We also point out that the number of deputies appointed and the amount of their salaries is determined by the Commissioners' Court and not by the county officer. Article 3902, V. A. C. S., fixes the maximum salaries to be allowed such deputies.

We take up for consideration your Question No. 3 with the assumption that you refer only to cars or automobiles owned by the sheriff or his deputies. In this respect, we point out

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the following: Article 3899 (b), V. A. C. S., in part, provides:

"Where the automobile or automobiles are owned by the sheriff or his deputies, they shall be allowed four (4) cents for each mile traveled in the discharge of official business, which sum shall cover all expenses of the maintenance, depreciation, and operation of such automobile. Such mileage shall be reported and paid in the same manner prescribed for other allowable expenses under the provisions of this section . . ." (Underscoring ours).

The "manner prescribed for other allowable expenses" to be reported and paid under the provisions of said Article 3899 (b) is stated therein as follows:

"Each officer, shall, at the close of each month of his tenure of office, make an itemized and sworn report of all approved expenses incurred by him and charged to his county, accompanying such report with invoices covering such purchases and requisitions issued by him in support of such report. If such expenses be incurred in connection with any particular case, such report shall name such case. Such report, invoices, and requisitions shall be subject to the audit of the county auditor..." (Underscoring added)

We believe that a strict compliance with the above provisions would conform substantially with the requirements set out in your Question No. 3, with the exception of that requiring a showing of all mileage acquired on "personal business" as distinguished from "county business." Such requirement as to "personal mileage" is unauthorized. It should be borne in mind that the actual expenses incurred, such as gas, oil, etc., are not to be reported - just the actual mileage incurred on county business, itemized and sworn to.

Trusting the above fully answers your questions, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

A. W.

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By:

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