



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

February 28, 1939

Hon. A.L. Lowery
County Attorney
Nacogdoches County
Nacogdoches, Texas

Dear Sir:

Opinion No. 0-08

Re: May the Commissioners' Court set the salaries of the district and county officers enumerated in Article 3883 in a less amount than earned by such officers in the year of 1935 under the Officer's Salary Law?

Your request for an opinion on the above stated question has been received by this office.

We are informed by your letter and by the Comptroller's Department that Nacogdoches County has a population of 31,000 inhabitants as shown by the last Federal census.

Article 3883 reads in part as follows:

"Except as otherwise provided in this Act, the annual fees that may be retained by precinct, county and district officers mentioned in this Article shall be as follows:

"In counties containing as many as twenty-five thousand and one (25,001) and not more than thirty-seven thousand, five hundred (37,500) inhabitants, and in which there is no city containing twenty-five thousand (25,000) inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Twenty-

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seven Hundred and Fifty Dollars (\$2750) each; Justice of the Peace and Constable, Fifteen Hundred Dollars (\$1500) each; provided, however, that in all counties containing a population of not less than twenty-nine thousand, five hundred (29,500), nor more than thirty thousand (30,000), according to the last preceding Federal Census, the Justice of the Peace shall be allowed to retain out of the fees collected by such officer the sum of Twenty-four Hundred Dollars (\$2400) per annum.

"In counties containing as many as twenty-five thousand and one (25,001) and not more than thirty-seven thousand, five hundred (37,500) inhabitants, and in which there is no city containing twenty-five thousand (25,000) inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Twenty-seven Hundred and Fifty Dollars (\$2750) each; Justice of the Peace and Constable, Fifteen Hundred Dollars (\$1500) each; provided, however, that in all counties containing a population of not less than twenty-nine thousand, five hundred (29,500), nor more than thirty thousand (30,000), according to the last preceding Federal Census, Constables shall be allowed to retain out of the fees collected by such officer the sum of Twenty-four Hundred Dollars (\$2400) per annum."

Article 3891, Revised Civil Statutes of Texas, reads in part as follows:

"Each officer named in this Chapter shall first out of the current fees of his office pay or be paid the amount allowed him under the provisions of Article 3885, together with the salaries of his assistants and deputies, and authorized expenses under Article 3899, and the amount necessary to cover costs of premium on whatever surety bond may be required by law. If the current fees of such office collected in any year be more than the

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amount needed to pay the amounts above specified, same shall be deemed excess fees, and shall be disposed of in the manner hereinafter provided.

"In counties containing as many as twenty-five thousand and one-(25,001) and not more than thirty-seven thousand, five hundred (37,500) inhabitants, district and county officers named herein shall retain one-third of such excess fees until such one-third, together with the amount specified in Article 3883, amounts to Thirty-five Hundred Dollars (\$3500). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Eighteen Hundred Dollars (\$1800)."

Section 13 of Article 39, 2e reads in part as follows:

"The Commissioners' Court in counties having a population of twenty thousand (20,000) inhabitants or more, and less than one hundred and ninety thousand (190,000) inhabitants according to the last preceding Federal Census, is hereby authorized and it shall be its duty to fix the salaries of all the following named officers, to-wit: sheriff, assessor and collector of taxes, county judge, county attorney, including original district attorneys and county attorneys who perform the duties of district attorneys, district clerk, county clerk, treasurer, hide and animal inspector. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by him 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; provided that in counties having a population of twenty thousand (20,000) and less than thirty-seven thousand five hundred (37,500) according to the last preceding Federal Census and having an assessed valuation in excess of Fifteen Million (\$15,000,000.00) Dollars,

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according to the last approved preceding tax roll of such county the maximum amount allowed such officers as salaries may be increased one (1%) per cent for each One Million (\$1,000,000.00) Dollars valuation or fractional part thereof, in excess of said Fifteen Million (\$15,000,000.00) Dollars valuation over and above the maximum amount allowed such officers under laws existing on August 24, 1935;....."

Under the provisions of Articles 3883 and 3891, supra, we believe that the maximum salaries allowed district and county officers enumerated in Article 3883 in counties containing as many as 25,001 and not more than 37,500 inhabitants is the sum of \$3,500.00 each, provided, such officers earn fees sufficient to pay such amounts and that under Article 3912e, Sec. 13, supra, the Commissioners' Court is authorized and it shall be its duty to fix the salaries of such officers at a sum not exceeding the maximum allowed by Articles 3883 and 3891 and not less the amount earned by such officers for the year of 1935.

In view of the foregoing statutes, you are respectfully advised that it is the opinion of this Department that it is the duty of the Commissioners' Court to fix the salaries of district and county officers enumerated in Article 3883 at a sum not exceeding the maximum allowed by Articles 3883 and 3891 and not less than the amount earned by such officers for the year of 1935.

Trusting that the foregoing answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

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Assistant

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APPROVED:

Gerrard Mann
ATTORNEY GENERAL OF TEXAS

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