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January 5, 1939.

Hon. Charles H. Theobald,
County Attorney,
Galveston, Texas.

Dear Mr. Theobald:

Opinion No. 0-12
Re: Appointment of Deputy Sheriffs

Your letter of December 28, 1938, addressed to Attorney General William McCraw, has been referred to this department for answer. We quote from your letter as follows:

"The County Commissioners' Court of this County have before them the question of the number of deputies which the Sheriff of Galveston County is entitled to appoint with their approval. Galveston County, according to the last United States Census, contains a population of 64,401.

"Owing to the development of several oil fields in this county it is necessary that the Sheriff have paid deputies at each of them. The Sheriff now has four (4) deputies in the precinct in which our court house is located, one of whom is the office deputy and handles the accounts in the Sheriff's office and the other three are active in our courts, of which two are district courts and the other is the county court and, in addition to that, they serve the processes in civil and criminal cases, as well as summons the jurors for the courts, including special venires in capital cases and, in fact, all the duties of the Sheriff, and naturally they are always crowded for time.

"My purpose in writing you is to ask

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if Article 6869 of Vernon's Annotated Civil Statutes (pocket) is still in effect in that it limits the number of deputies to be appointed by the Sheriff in any one county to not exceeding three in the justice precinct in which is located the County Seat and one in each Justice Precinct. The reason for my difficulty in determining if the said statute is still in effect is that at that time the Sheriff was working entirely on a fee basis and now he, as well as other officials of this County, work on a salary basis.

"Article 3902, ✓ Vernon's Annotated Civil Statutes, (pocket) Acts of the 45th Legislature, 2nd Called Session, Senate Bill #10, Section #1, provides for the appointment of deputies by County officials. You will note that the first paragraph thereof provides that, when any district, county or precinct officer shall require the services of deputies, assistants or clerks in the performance of his duties he shall apply to the County Commissioners' Court of his county for authority to appoint such deputies, assistants or clerks; then follows the requirements of the application. It would seem that under Article 3902 the Sheriff of this county, having a population of 64,401, (Sec. 4) is entitled to a first assistant or chief deputy and other assistants, deputies or clerks, the salaries being named.

"In view of the foregoing, it occurs to me that the Sheriff of this County is not limited to the three deputies at the County seat and one in each justice precinct, but that he may make application to the Commissioners' Court in due form, setting out the number of deputies, assistants or clerks that he requires for the performance of the duties of his office,

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naming the salaries to be paid them, of course within the limitation prescribed by law; and then, the Commissioners' Court, acting within its discretion, may determine the number to be appointed as to the Court may appear proper."

You are respectfully advised that it is the opinion of this department that you are correct in your conclusion of law as to the above question.

The department is not in possession of any definite decision affecting the question on hand, and therefore must arrive at the conclusion that Article 6869, Vernon's Annotated Texas Civil Statutes which applies to the sheriffs under the Fee Law, has been superseded insofar as it applies to Galveston County, Texas, a county having a population of 64,601, according to the last United States Census, by Article 3902, Revised Civil Statutes of Texas, and Section 4 thereof, and by the Officers' Salary Law of the State of Texas.

It is the further opinion of this department that it rests within the discretion of the Hon. Commissioners' Court of Galveston County, Texas, as to the number of deputies which the sheriff should employ. You will note in Article 3902, Revised Civil Statutes, that the sheriff shall make application to the Commissioners' Court for the appointment of deputies, and etc., and that, furthermore, he shall show the probable receipts and disbursements of his office in order for the Commissioners' Court to determine the number and necessity therefor.

It is therefore the opinion of this department that such appointments of deputies should be determined by the Commissioners' Court of Galveston County, Texas, through the necessity of such appointments and also governed by the revenues of the sheriff's office. It is very evident that no such appointments should exceed that of necessity and that due consideration of all conditions necessitating said appointments should be the controlling factor in such consideration as might arise affecting the county at large.

Therefore, you are respectfully advised that the law contemplates the safety and security of the pro-

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erties of people and their personal care and protection and such action taken by the Honorable Commissioners' Court should be governed accordingly, all in their sound discretion.

Yours respectfully,

ATTORNEY GENERAL OF TEXAS

William J. Fanning

By

Assistant

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APPROVED:

Bernice Thayer
ATTORNEY GENERAL OF TEXAS

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