



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

January 25, 1939

Hon. A. P. Prestwood  
County Auditor  
Tyler, Texas

Dear Mr. Prestwood:

Opinion No. O-131  
Re: Fees of Justice of Peace  
and Constable

Your request for an opinion upon the question:

"What are the maximum fees that can be retained by Justice of the Peace and Constable when the County is in bracket of Counties with a population of 37,501 to 60,000?"

has been received by this office.

Section 3 of Article 3683 of the Revised Civil Statutes of the State of Texas provides as follows:

"In counties containing as many as thirty-seven thousand five hundred and one (37,501) and not more than sixty thousand (60,000) inhabitants, or containing a city of over 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, Thirty-five Hundred (\$3500.00) Dollars each; Justice of the Peace and Constable, Eighteen Hundred (\$1800.00) Dollars each. (as amended Acts 1930, 41st Leg., 4th C. S., p. 30, ch. 20; Acts 1931, 42nd Leg., p. 822, ch. 340; Acts 1933, 43rd Leg., p. 734, ch. 220, para. 1)."

Paragraph 4 of Article 3691 of the Revised Civil

Statutes of Texas provides as follows:

"In counties containing as many as thirty-seven thousand, five hundred and one (37,501) and not more than sixty thousand (60,000), or containing a city of over twenty-five thousand (25,000) 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 Forty-two Hundred and Fifty Dollars (\$4250). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Twenty-two Hundred Dollars (\$2200)."

You are, therefore, advised that the salaries of Justices of the Peace and Constables of Smith County are respectively, \$1,800.00, plus one-third of the fees collected in excess of such amount of salary, as provided in Article 3891 so that such total salary shall not exceed the sum of \$2,200.00.

We construe Article 3891 to mean that in computing the excess fees to be allowed these officers it is not permissible to compute one-third of all fees collected but only one-third of such fees in excess of and above \$1,800.00. That is to say, if the total fees collected should be \$3,000.00, the Justice of Peace and Constable would be entitled to retain one-third of \$1200.00 which would be the sum of \$400.00, thereby making the total salary and excess fees allowed to such offices to be the sum of \$2,200.00.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *H. J. Jennings*

Assistant

WJF:AW

APPROVED:

*George C. Mason*  
ATTORNEY GENERAL OF TEXAS