



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

February 15, 1939

Hon. E. A. Watson  
County Attorney  
Crosbyton, Texas

Dear Sir:

Opinion No. G-279  
Re: Construing the compensation  
allowed under Article 3895,  
Revised Civil Statutes.

Your letter of February 8nd, addressed to Hon. Gerald C. Mann, Attorney General of Texas, has been received, in which you request an opinion pertaining to questions on Article 3891. We herein set forth the second paragraph of your letter:

"Is an ex-officio compensation duly and regularly allowed by a commissioners' court, under Article 3895 (amended 43rd Legislature, 1933) to be treated as such a fee of office as would be subject to the maximum of fees allowed under Article 3883 (amended 43rd Legislature, 1933), and, if surpassing said maximum, to be treated as excess fees to be disposed of under Article 3891 (amended 43rd Legislature, 1933)? Or, is such ex-officio compensation to be treated as additional compensation and to be reported for the purpose of showing, whether or not such additional compensation when added to fees retained and excess fees surpasses the maximum to be earned by an official as allowed in said Article 3891."

Article 3895 reads as follows:

"The Commissioners' Court is debarred from allowing compensation for ex-officio services to county officials when the compensation and excess fees which they are

allowed to retain shall reach the maximum provided for in this chapter. In cases where the compensation and excess fees which the officers are allowed to retain shall not reach the maximum provided for in this chapter, the Commissioners' Court shall allow compensation for ex officio services when, in their judgment, such compensation is necessary, provided, such compensation for ex officio services allowed shall not increase the compensation of the official beyond the maximum of compensation and excess fees allowed to be retained by him under this chapter. Provided, however, the ex officio herein authorized shall be allowed only after an opportunity for a public hearing and only upon the affirmative vote of at least three members of the Commissioners' Court."

We assume from your letter that such allowance made by the Commissioners' Court, by order duly entered, is not for any such special legal services and this being true, such allowance is more in the nature of an advance of compensation upon the maximum fees allowed by law to be retained by the official. Article 3895 places a limitation upon such compensation in that said sum allowed with the excess fees which said officer may retain shall not exceed the maximum amount of compensation and excess fees allowed to be retained.

(C1750278) As we understand the opinion in the Veltman case, referred to in your letter, the court points out that Article 3895, and as it existed prior to its amendment, while limiting the amount of compensation, the limitation on the authority of the Commissioners' Court to allow ex-officio compensation was not enlarged or diminished by the amendment but existed the same as prior thereto.

In determining the maximum compensation, it is necessary to read together Articles 3883 and 3891, as amended. It is evident by the plain and unambiguous language used that Article 3895 is not to be confused with such fees allowed under these articles. Our interpreta-

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tion in the Weltman case is to the effect that Article 3895 vested authority in the Commissioners' Court in the matter of allowing an estimated amount of compensation to be paid within its own judgment but subject to the limitations as expressed therein.

We respectfully refer you to the case of Anderson County vs. Hopkins, 187 SW 1019, construing ex-officio compensation under Article 3895 prior to its amendment in 1933 in which it is held that such ex-officio compensation is not considered "excess fees" of office.

It is, therefore, the opinion of this Department that an allowance of compensation by the Commissioners' Court under Article 3895, when added to the undisputed fees allowed and retained under Article 3883 cannot exceed the maximum expressed in Article 3891. When this allowance, added to such fees retained, makes the total surpass the maximum allowed under Article 3883, the overage would not be considered "excess fees" and distributed as such.

Trusting that this answers your inquiry, we remain

Yours very truly

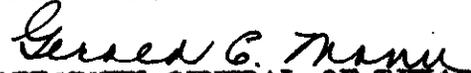
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By

  
Wm. J. R. King  
Assistant

WEK:AW

APPROVED:

  
ATTORNEY GENERAL OF TEXAS

*Handwritten initials*