



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

May 2, 1939

Hon. J. L. Crosthwait
County Auditor
Dallas County
Dallas, Texas

Dear Sir:

Opinion No. O-716
Re: Salaries of precinct officers
in Dallas County under Salary
Bill.

Your request for opinion upon the following
question:

"What annual salaries can the com-
missioners' court legally pay to those
precinct officers who are compensated on
a salary basis?"

has been received by this Department.

The population of Dallas County, Texas, accord-
ing to the last preceding Federal census is 325,691.

Section 19 of Article 3912-e, Revised Civil Sta-
tutes of Texas, reads as follows:

"Sec. 19. Provisions of this section
shall apply to and control in each county
in the state of Texas having a population
in excess of 190,000 inhabitants, according
to the last preceding Federal census.

2(a) The commissioners' court of such
county, at its first regular meeting in
January of each calendar year, shall determine

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by order made and entered in the minutes of said court, whether the precinct officers of each county shall be compensated upon a salary basis as provided for in this section, or whether they shall receive as their compensation such fees of office as may be earned and collected by them in the performance of the duties of their office, subject to the limitations hereinafter provided; and it shall be the duty of the county clerk of each such county to forward to the Comptroller of Public Accounts of the state of Texas, on or before the 31st day of January, a certified copy of such order.

"(b) Where the commissioners' court shall have determined the precinct officers in such county shall be compensated for their services, by the payment of an annual salary, such officers shall receive such salary in lieu of all other fees, commissions or compensation which they would otherwise be authorized to retain; provided that the provisions of this sub-section shall not affect the payment of costs in civil cases by the state but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this section to account for fees, commissions, and costs collected from private parties.

"(c) The term 'precinct officers' as used in this section means justices of the peace and constables.

"Such precinct officers shall continue to be compensated for their services on a fee basis until the commissioners' court shall have determined otherwise in accordance with the provisions of this section.

"The annual fees that may be retained by any such precinct officer shall be Four Thousand Dollars each; provided that in counties having a population in excess of Three Hundred and Fifty-five thousand inhabitants, according to the last preceding or any future Federal census, such precinct officers may retain not to exceed Four Thousand, Five Hundred (\$4,500.00) Dollars each.

"All fees or commissions earned by such official shall be applied first to the payment of his deputies, authorized expenses of his office, and to make up the maximum of such office.

"All fees and commissions over and above the amount necessary to pay authorized expenses and deputy salaries, and to make up the maximum compensation above provided for, shall be deemed excess fees, and all excess fees not permitted to be retained shall be paid into the general fund of the county.

"Delinquent fees may be used to defray the salaries of deputies if current fees are insufficient for that purpose; they may be used also to make up the maximum compensation, exclusive of excess fees, allowed such offices for the fiscal year within which fees were earned. Delinquent fees collected in excess of the amount above provided for shall be paid by the officer collecting the same into the general fund of the county.

"Precinct officers, as defined in this Section, shall be compensated after an order duly enacted by the commissioners' court as herein provided on an annual salary basis from said officers' salary fund; but salaries shall be fixed by the commissioners' court at a reasonable sum not to exceed Four Thousand (\$4,000.00) Dollars each; provided that in counties having a population in excess of Three Hundred and Fifty-five Thousand inhabitants, according to the last

preceding or any future Federal census, such salaries shall be fixed by the commissioners' court at a reasonable sum not to exceed Four Thousand, Five Hundred (\$4,500.00) Dollars each, provided further that in such counties in which the commissioners' court determines to place justices of the peace and constables on a salary basis, said commissioners' court shall not be required to place said salaries in all precincts within the county at equal amounts, but said commissioners' court shall have discretion to determine the amount of salary to be paid to each of said justices of the peace and to each of said constables in the several precincts in said county within the limitations hereinabove set out in counties where the commissioners' court determines to place the justices of the peace on a salary basis the justice of the peace shall receive in addition thereto all fees, commissions, or payments for performing marriage ceremonies and for acting as registrar for the board of vital statistics, and when acting as ex-officio notary public. (As amended in 1937, 45th Leg., p. 32, Ch. 26, Sec. 1)."

In your letter you call our attention to Article 3912e-1, and Section c thereof, which reads as follows:

"Art. 3912e-1. The provisions of this section shall apply to and control in each county in the state of Texas having a population of Three Hundred Thousand (\$00,000) inhabitants or more and less than Three Hundred and Fifty-five Thousand (355,000) inhabitants according to the last preceding Federal census.

"(c) All justices of the peace and constables of such counties who are compensated on a fee basis as provided by law shall be entitled to retain annual fees and/or salary of Forty-five Hundred Dollars (\$4,500.00) each, provided however, that all fees or commissions

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whether current or delinquent which are collected by the incumbent during his tenure of office shall be applied first to the payment of his deputies, authorized expenses of his office and to make up the maximum compensation provided for in this subsection. No such officers shall be entitled to receive for any purpose any fees or commissions that are collected after he ceases to hold such office."

It is clearly apparent from a reading of this article that this article applies to justices of the peace and constables of such counties who are compensated on a fee basis. This article sets the sum of Four Thousand Five Hundred (\$4,500.00) Dollars as the maximum amount of annual fees and/or salary which precinct officers may retain. These officers must of course collect these fees before they could retain them. Fees obviously could never be retained unless they were first earned and collected. The word "retain" is defined by Webster's Dictionary as "to hold or to keep." It is also clearly apparent that this article sets the sum of Forty-five Hundred Dollars (\$4,500.00) as the maximum amount of fees that a precinct officer may legally retain out of the legal fees he actually earns and collects. The officer while on the fee system would retain such fees as he legally collected provided the same did not exceed the maximum. For example, if the officer collected fees of Fifty (\$50.00) Dollars for one year, that would be his annual fees and/or salary.

We understand, however, that Dallas County, Texas, as provided by law, has placed their precinct officers upon a salary basis, as provided under Section 19 of Article 3912e, Revised Civil Statutes of Texas. Since this is true, Section (c) of Article 3912e-1, cited by you in your letter, would have no application to this question. Section 19 of Article 3912e, Revised Civil Statutes of Texas, would therefore control.

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You are therefore, respectfully advised that it is the opinion of this Department that the commissioners' court of Dallas County, Texas may set the salaries of the precinct officers of the county at a reasonable sum not to exceed Four Thousand (\$4,000.00) Dollars each.

Trusting that this answers your inquiry, we are

Very truly yours,

ATTORNEY GENERAL OF TEXAS

By



Wm. J. Fanning
Assistant

WJF:AW

APPROVED:



ATTORNEY GENERAL OF TEXAS