



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

May 29, 1939

Mr. Gerald Stockard
County Attorney
Denton County
Denton, Texas

Dear Sir:

Opinion No. 0-886
Re: Can the constable serve as
bailiff for the grand jury
and receive pay therefor?

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

Article 687B, Revised Civil Statutes reads
as follows:

"The qualified voters of each jus-
tice precinct at each general election
shall elect a constable for such precinct
for a term of two years."

Section 53 of Article 16 of the Texas Consti-
tution reads in part as follows:

"The Accounting Officers of this
State shall neither draw nor pay a war-
rant upon the Treasury in favor of any
person, for salary or compensation as
agent, officer or appointee, who holds
at the same time any other office or posi-
tion of honor, trust or profit, under
this State or the United States, except
as prescribed in this Constitution."

Section 40, Article 16 of the Texas Consti-
tution provides in part as follows:

"No person shall hold or exercise,

Mr. Gerald Stockard, May 29, 1939, Page 2

at the same time, more than one Civil Office of emolument, except that of Justice of Peace, County Commissioner, Notary Public and Postmaster, Officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States and enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, and retired officers of the United States Army, Navy, and Marine Corps, and retired warrant officers, and retired enlisted men of the United States Army, Navy, and Marine Corps, unless otherwise specially provided herein..."

It is well established that a constable is a public officer. Murray vs. State, 67 SW 2nd 274; Tex. Jur. Vol. 34, p. 601; and Tex. Jur., Vol. 38, p. 432.

Section 40, Article 16 of the Constitution, supra, prohibits the holding at the same time more than one civil office of emolument, except those offices named therein.

A grand jury bailiff is also an officer, his appointment being provided for by statute, his tenure of office being limited as to time, and an oath of office being required from him. Article 567, 567a, 567b and 568, Code of Criminal Procedure; Guilla vs. State, 28 SW 2nd 541.

In an opinion written June 11, 1931, by Hon. Bruce W. Bryant, Assistant Attorney General, this department held that a constable could not accept the office of bailiff for the grand jury and receive pay therefor.

In view of the foregoing authorities, you are respectfully advised that it is the opinion of this department that a constable is prohibited by the Constitution

Mr. Gerald Stockard, May 29, 1939, Page 3

from serving and accepting pay as the grand jury bailiff while such constable retains his office as constable.

Trusting that the foregoing answers our inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

AW:AW

APPROVED:

Gerrard B. Mann
ATTORNEY GENERAL OF TEXAS

