



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. H. P. McMillan
County Auditor
Robertson County
Franklin, Texas

Dear Sir:

Opinion No. O-1112

Re: Where precinct officers are compensated on a salary basis, the Commissioners' Courts cannot legally allow a stipulated monthly sum for expenses.

We are in receipt of your recent letter in which you ask the following question:

"Where Precinct officers are compensated on salary basis, can Commissioners' Court legally allow a stipulated monthly sum for expenses; that is, when annual salary is fixed in January and later allow an additional fixed monthly amount for expenses, the item not being included in 1939 budget?"

Provision for authorized expenses of precinct officers on a salary basis may be found in the statutes. We direct your attention to the pertinent sections thereof.

Art. 3699, Vernon's Annotated Code of Criminal Procedure, paragraph (h), reads in part:

"Each officer named in this Act, where he receives a salary as compensation for his services, shall be empowered and permitted to purchase and have charged to his county all reasonable expenses necessary in the proper and legal conduct of his office, premiums on Officials' bonds, premium on

fire, burglary, theft, robbery insurance protecting public funds and including the cost of surety bonds for his Deputies, such expenses to be passed on, pre-determined and allowed in kind and amounts, as nearly as possible, by the Commissioners' Court, once each month for the ensuing month, upon ^{the} application by each officer, stating the kind, probable amount of expenditure and the necessity for the expenses of his office for such ensuing month, which application shall, before presentation to said court, first be endorsed by the County Auditor, if any, otherwise the County Treasurer, only as to whether funds are available for payment of such expenses . . .

"Such purchases shall be made by each officer, when allowed, only by requisition in manner provided by the County Auditor, if any, otherwise by the Commissioners' Court. Each officer shall, at the close of each month of his tenure of office, make an itemized and sworn report of all approved expenses incurred by him and charged to his county, accompanying such report with invoices covering such purchases and requisitions issued by him in support of such report. If such expenses be incurred in connection with any particular case, such report shall name such case. Such report, invoices and requisitions shall be subject to the audit of the County Auditor, if any, otherwise by the Commissioners' Court, and if it appears that any item was not incurred by such officer, or that such item was not a necessary or legal expense of such office, or purchased upon proper requisition, such item shall be by said County Auditor or court rejected, in which case the payment of such item may be adjudicated in any court of competent jurisdiction. All such approved claims and accounts shall be paid from the Officers' Salary Fund unless otherwise provided herein."

The Officers' Salary Bill has been incorporated in Vernon's Code of Criminal Procedure as Article 3912e. Section 3 provides for payment of salaries in lieu of fees. Section 4 creates the "Officers' Salary Fund" for counties containing a population of less than 190,000 population, wherein county or precinct officers are compensated on a salary basis, and requires such fund to be kept separate

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and apart from all other county funds, to "be held and disbursed for the purpose of paying the salaries of officers and the salaries of deputies, assistants and clerks or officers who are drawing a salary from said fund . . . and to pay the authorized expenses of their offices."
(underscoring ours)

From reading the above quoted excerpts from the statutes, it is clear to us that the Legislature never intended that either county or precinct officers should be allowed a stipulated fixed monthly sum as expenses, but that each item of expense should be submitted to the Auditor and Commissioners' Court for approval or rejection. We therefore answer your question in the negative.

Trusting the above satisfactorily answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Benjamin Woodall
Assistant

BW:lw

Approved Aug. 19, 1939
GERALD C. MANN
ATTORNEY GENERAL OF TEXAS

Approved
Opinion Committee
By B.W.B., Chairman

WJF