



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Falls Co

Overruled by S-125

Honorable Charles E. Reagan
Criminal District Attorney
Marlin, Texas

Dear Sir:

Opinion No. 0-1134
Re: Can the Criminal District Attorney of Falls County incur reasonable and necessary expense in investigating crime and accumulating evidence in criminal cases?

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

Your letter reads in part as follows:

"There is no district attorney of Falls County, but the Criminal district attorney performs the duties of a district attorney for Falls County, Texas. All district and County officers being placed upon salary basis. In your opinion, can the Criminal district Attorney of Falls County, Texas, incur reasonable and necessary expenses in investigating crime and accumulating evidence in criminal cases?"

Section 13 of Article 3912e reads in part as follows:

"The Commissioners' Court in counties having a population of twenty thousand (20,000) inhabitants or more, and less than one hundred and ninety thousand (190,000) inhabitants according to the last preceding Federal Census, is hereby authorized and it shall be its duty to fix the salaries of all the following named officers, to-wit: sheriff, assessor and collector of taxes, county judge, county attorney, including criminal district attorneys and county attorneys who perform the duties of district attorneys, district clerk, county clerk, treasurer, hide and animal inspector. Each of said officers shall be paid

Hon. Charles E. Reagan, Page 2

in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by him in his official capacity for the fiscal year 1935, and not more than the maximum amount allowed such officer under laws existing on August 24, 1935; . . .

"(b) The compensation of a criminal district attorney or county attorney performing the duties of district attorney, together with the compensation of his assistants, shall be paid out of the County Officers' Salary Fund, but the State shall pay into such fund each year an amount equal to a sum which bears the same proportion to the total salary of such criminal district attorney or county attorney performing the duties of a district attorney, together with the salary of his assistants, as all felony fees collected by such official during the year of 1935 bear to the total fees collected by such official during such year."

Section (b) of Article 3899, Revised Civil Statutes reads in part as follows:

"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. ..."

Under Article 199, Revised Civil Statutes, Falls County is the only county composing the 82nd judicial district.

We are informed by the Comptroller's Office that Falls County had a population of 38,771 according to the last Federal census.

Article 326q, Revised Civil Statutes, reads in part as follows:

"In those counties of this state having a population of not less than thirty-three thousand five hundred (33,500) and not more than seventy-five thousand (75,000) inhabitants and not containing a city of more than fifty thousand (50,000) inhabitants as determined by the last preceding Federal census, and each succeeding Federal census thereafter, and in which counties there are one or more judicial districts and in which the county performs the duty of county attorney and district attorney, and in which there is not now a district attorney, the office of criminal district attorney is hereby created, and shall exist from and after the passage of this act. This office shall be known as Criminal District Attorney of such county. ..."

Hon. Charles E. Reagan, Page 4

". . . The Criminal District Attorney shall be allowed to retain out of the fees earned and collected by him the sum of Five Thousand Five Hundred (\$5,500) Dollars per annum, as his compensation. After deducting the Five Thousand Five Hundred (\$5,500) Dollars the remaining amount is to be applied first to the payment of salaries of his assistant or assistants in those counties where said assistant or assistants are now being paid from the fees of the office of county attorney, and second, the actual and necessary expense incurred by him and his assistants in the conduct of his said office as authorized by Article 3899 of the Revised Civil Statutes of 1925, as amended, and any other expense allowed by law. . . .

"The Criminal District Attorney shall at the close of each month of the tenure of said office make the report required of county officers by Article 3899 of the Revised Civil Statutes of 1925, as amended, and shall also, at the close of each fiscal year make the annual report required of county officers by Article 3897 of the Revised Civil Statutes of 1925, as amended.

"It is not the intention of this act to create any office of District Attorney nor any other constitutional office and the office of Criminal District Attorney is hereby declared to be a separate distinct office from the constitutional office of district attorney and no criminal district attorney shall draw or be permitted to any salary whatsoever from the State of Texas.

"This act is not intended and shall not be considered or construed as repealing any law now on the statute books except those in conflict herewith, which shall be cumulative thereof."

Section (c) of Article 3899, supra, specifically provides that criminal district attorneys in all counties in this state coming within a certain population bracket shall be empowered and permitted to incur reasonable and necessary expense of investigating crime and accumulating evidence in criminal cases; and shall be allowed three cents (3¢) a mile for each mile travelled by him in automobile

Hon. Charles E. Regan, Page 5

furnished by him in the discharge of official business which sum shall cover all expenses of maintenance, depreciation, and operation of such automobile. Such expenses shall be reported to the Commissioners' Court of each county affected by this act as other expenses reported and shall be paid by said Commissioners' Court as such other expenses are paid.

Section 18 of Article 3912e, supra, provides in effect that each Criminal District Attorney in this state serving a district comprising two or more counties the population of which district exceeds 150,000 inhabitants according to the last preceding Federal census shall be allowed a sum not to exceed \$500.00 per annum for the necessary expense of such office, said sum to be paid only upon the itemized sworn statement of such office showing the necessity therefor and approved by the State Auditor.

It is obvious that the Legislature did not intend to allow any expense in investigating crime and accumulating evidence in criminal cases by the general provisions of Article 3899, supra, because in Section 3, of this Article, the Criminal District Attorney in all counties in this state coming within a certain population bracket are empowered and permitted to incur reasonable and necessary expenses in investigating crime and accumulating evidence in criminal cases, and as Falls County does not come within the population bracket authorizing such expenses this provision of the statute does not apply to Falls County.

You are respectfully advised that it is the opinion of this department that the Criminal District Attorney of Falls County cannot incur reasonable and necessary expense in investigating crime and accumulating evidence in criminal cases.

Trusting that the foregoing answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Ardell Williams

Ardell Williams
Assistant

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APPROVED AUG 26, 1939

Geordie Mann

ATTORNEY GENERAL OF TEXAS

