



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Tom C. King
State Auditor
Austin, Texas

Dear Sir:

Opinion No. 9-1169
Re: Fees of Tax Assessor-Collector
serving one-half year in
county under twenty thousand
population, compensated on an-
nual fee basis.

Your letter of July 21st., wherein you refer to this department a request for an opinion from Honorable Jean Rodgers, County Attorney, Hardeman County, Texas, by letter under date of July 20th and enclosed therewith, has received our attention.

In answering this request, permit us to set forth substantially the salient facts as contained in the County Attorney's letter addressed to you under the above date:

Hardeman County Tax Assessor-Collector is a fee officer in a county under twenty thousand population. During the year 1938, W. E. Meek was elected Tax Assessor-Collector of Hardeman County, Texas, for the term 1939-40. He took office and remained in office until on or about the first of July, 1939, at which time he tendered his resignation to the Commissioners Court. On the 10th day of July, 1939, the Commissioners Court appointed another Tax Assessor-Collector who has duly qualified. During the first half of the year 1939 W. E. Meek remained in office most of the fees of office were collected or due from collections made. Also the assessments were made during that time but upon the successor to W. E. Meek will fall the duty of making the assessment rolls.

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In the light of the above facts, the following questions are asked, which we will endeavor to answer as if stated as a single question:

1. "To what amount of fees is W. E. Koek entitled to since he has only served one-half year? What amount of fees is the new Tax Assessor-Collector entitled to receive for the last half of the year?"

2. "What fees would W. E. Koek be entitled to out of those State assessment fees, and what fees would his successor, L. Myra Odell, be entitled to out of State assessment fees?"

Each county officer is required by law, Article 3897 as amended, Revised Civil Statutes of 1925, to file a sworn statement at the close of each fiscal year (December 31st).

The material portions of Articles 3897 and 3898 R. C. S., 1925, as amended, hereinafter set forth, are to be construed together and are applicable to officers mentioned in the Maximum Fee Bill Statutes.

*Article 3897. Sworn statement. Each district, county and precinct officer, at the close of each fiscal year (December 31st) shall make to the district court of the county in which he resides a sworn statement in triplicate (on forms designed and approved by the State Auditor) a copy of which statement shall be forwarded to the State Auditor by the clerk of the district court of said county within thirty (30) days after the same has been filed in his office, and one copy to be filed with the county auditor, if any; otherwise said copy shall be filed with the Commissioners' Court. Said report shall show the amount of all fees, commissions and compensations whatever earned by said officer during the fiscal year; and secondly, shall show the amount of fees, commissions and compensations collected by him during the fiscal year; thirdly, said report shall contain an itemized statement of all fees, commissions and compensations earned during the fiscal year which were not collected, together with

the name of the party owing said fees, commissions and compensations. Said report shall be filed not later than February 1st following the close of the fiscal year and for each day after said date that said report remains not filed, said officer shall be liable to a penalty of Twenty Five (\$25.00) Dollars, which may be recovered by the county in a suit brought for such purposes, and in addition said officer shall be subject to removal from office.

"Article 3898, Fiscal year. The fiscal year, within the meaning of this Act, shall begin on January 1st of each year; and each district, county and precinct officer shall file his report and make the final settlement required in this Act not later than February 1st. of each year;... Whenever such officer serves for a fractional part of the fiscal year, he shall nevertheless file his report and make final settlement for such part of the year as he serves and shall be entitled to such proportionate part of his compensation as the time for his service bears to the entire year."

It appears to be the settled policy of the law that compensation allowed the Tax Assessor-Collector and authorized by law for his services is to be determined on an annual basis. Where he serves only a fractional part of the year for which a yearly maximum compensation is allowed his office, though he has collected and by virtue of his office, earned the full year's maximum, he cannot be allowed to retain any greater portion of that part of the total annual maximum compensation which his term of office in proportion bears to the "fiscal year." Such officer is entitled to receive his proportional part of the annual net earnings, and that regardless of the amount earned during his tenure of office, for such fractional part of the year during which he served.

It is, therefore, the opinion of this department that a County Tax-Assessor-Collector compensated on an annual fee basis, and who resigns during any fiscal year, is required, by the provisions of Article 3898, R. C. S., 1925, as amended, to file his annual report and make final settlement with the county. The combined annual reports of such Tax Assessor-Collector and his successor are to be taken

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in determining the total annual maximum and excess fees allowed said officers, not to exceed the amount authorized by law. As determined by such final settlements, each officer may be paid or retain only that proportional part of the combined net earnings as his time of service as Tax Assessor-Collector bears to the entire fiscal year.

Trusting the above answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Tom C. King
Tom C. King
Assistant

Wm.K-11R

APPROVED AUG 26, 1939

Gerald B. Mann

ATTORNEY GENERAL OF TEXAS

