



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable C. J. Wilde
County Auditor
Nueces County
Corpus Christi, Texas

Dear Sir:

Opinion No. O-1175
Re: Commissioners' Court - deputy
tax assessors-collectors -
Article 3902, R. C. S.

Your request for opinion upon the following ques-
tions:

"1. Would the employment by the Commis-
sioners' Court of 'representatives of the Com-
missioners' Court' at salaries in excess of
\$1,800.00 per annum for the purpose of working
under the direction of the Tax Assessor-Collec-
tor in assessing property, and the taking of
the oath of office for Deputy Tax Assessors by
said representatives, be a violation of Section
3 of Article 3902, which, referring to counties
the size of the one in question, states that
salaries of assistants, deputies or clerks,
other than the First Assistant or Chief Deputy,
shall not exceed \$1,800.00 per annum?"

"2. Would your answer to question number 1
be the same if the employees did not take an
oath of office?"

"3. Would the payment for overtime to em-
ployees who are drawing the maximum salary al-
lowed under Section 3 of Article 3902 be a
violation of that Article?"

Article 3902, Revised Civil Statutes of Texas,
in part, reads as follows:

"Whenever any district, county or precinct officer shall require the services of deputies, assistants or clerks in the performance of his duties he shall apply to the County Commissioners' Court of his county for authority to appoint such deputies, assistants or clerks, stating by sworn application the number needed, the position to be filled and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions and compensation to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; and said court shall make its order authorizing the appointment of such deputies, assistants and clerks and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of said court may be proper; provided that in no case shall the Commissioners' Court or any member thereof attempt to influence the appointment of any person as deputy, assistant or clerk in any office. Upon the entry of such order the officers applying for such assistants, deputies or clerks shall be authorized to appoint them; provided that said compensation shall not exceed the maximum amount hereinafter set out. The compensation which may be allowed to the deputies, assistants or clerks above named for their services shall be a reasonable one, not to exceed the following amounts: (Underscoring ours)

"In counties having a population of thirty-seven thousand five hundred and one (37,501) and not more than sixty thousand (60,000) inhabitants, first assistant or chief deputy not to exceed Twenty-one Hundred (\$2100.00) Dollars per annum; other assistants, deputies or clerks not to exceed Eighteen Hundred (\$1800.00) Dollars per annum each. Provided that nothing in this Act shall be construed as repealing or affecting Section 2 of H. B. No. 694, Chapter 315, Acts 1935, Forty-fourth Legislature, page 724. . . ."

The population of Nueces County, Texas, according to the 1930 Federal Census in 51,779.

"Commissioners' Court are courts of limited jurisdiction, in that their authority extends only to matters pertaining to

the general welfare of their respective counties and that their powers are only those expressly or impliedly conferred upon them by law, - that is, by the Constitution and statutes of the state." 11 Texas Jurisprudence 564-565.

"The appointment of deputies, chief clerks, or assistants by certain officers is specifically authorized by the statutes. Under the general statutory law, county officers coming within the provisions of the maximum fee bill are required to apply to the commissioners' court for authority to appoint deputies, assistants or clerks, and such court may make an order authorizing their appointment, determine the number to be appointed, and fix the compensation to be paid them within certain prescribed limits. In no case may the commissioners' court or any member thereof attempt to influence the appointment of any person as deputy, assistant or clerk in any office. Prior to the enactment of the general statute county officers determined for themselves the question of employing deputies, and made contracts for their compensation, but now the State determines the necessity for employing them and their number and compensation.

"The authority thus conferred upon the commissioners' court to assist in the appointment of deputies can be exercised only in the manner prescribed. If the statutory requirements are not complied with, the appointment of a deputy is void, and he may be ousted through quo warranto proceedings at the instance of the State. . . ."
Texas Jurisprudence, Vol. 34, § 155, p. 602.

"This provision manifests a public policy to empower county and precinct officers generally to select their deputies and assistants, and to forbid the Commissioners' Court from attempting to influence them in the selection of their assistants. The reason for this policy is that officers elected to discharge public trusts, and upon whom the responsibility for the proper

per discharge thereof rests, should be free to select persons of their own choice to assist them." Neeper vs. Stewart, 66 S. W. (2d) 812.

The statutes do not provide for such offices as "Representatives of the Commissioners' Court".

The Deputy Tax Assessors-Collectors are the deputies of the Tax Assessor-Collector, responsible to their superior and employer, the Tax Assessor-Collector, and are not "representatives of the Commissioners' Court", and are not responsible to the Commissioners' Court. They may be discharged by the Tax Assessor-Collector, but not by the Commissioners' Court.

In answer to your questions, you are respectfully advised that it is the opinion of this department that there are no such offices as "representatives of the Commissioners' Court"; that the Commissioners' Court has no authority to employ same either as "representatives of the Commissioners' Court" or as "deputies of the Tax Assessor-Collector", regardless of whether such purported representatives of the Commissioners' Court take an oath of office or not.

You are further respectfully advised that it is the opinion of this department that the Tax Assessor-Collector of Nueces County, Texas, may apply to the Commissioners' Court for authority to appoint deputies, stating the number he desires to appoint, the positions to be filled, and the amount to be paid each, which shall be presented in his sworn application to said Commissioners' Court, as outlined in Article 3902, Revised Civil Statutes of Texas. The salary of the first assistant or chief deputy shall not exceed \$2,100.00 per annum and the salary of other deputies, clerks or assistants shall not exceed \$1,800.00, in your county, under Section 3 of Article 3902, Revised Civil Statutes of Texas.

You are further respectfully advised that it is the opinion of this department that the maximum salary a legal deputy Tax Assessor-Collector, other than the first assistant or chief deputy, may receive in one year is \$1,800.00. There is no provision made in the statutes for "overtime pay or salary".

Honorable C. J. Wilde, Page 5

Trusting that this satisfactorily answers your questions, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By



Wm. J. Fanning
Assistant

WJF:GO

APPROVED AUG 12, 1939



ATTORNEY GENERAL OF TEXAS

