



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

WALD C. MANN  
ATTORNEY GENERAL

Hon. Thomas A. Wheat  
County Attorney  
Liberty County  
Liberty, Texas

Dear Sir:

Opinion No. 0-1279

Re: May the county reimburse the county attorney who is compensated on the salary basis for expenses incurred while investigating criminal felony cases?

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

Section (b) of Article 3899, R. C. S. as amended 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 of 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

*overruled by  
S-125*

the county auditor, if any, otherwise the county treasurer, only as to whether funds are available for payment of such expenses. The commissioners' court of the county of the sheriff's residence may, upon the written and sworn application of the sheriff stating the necessity therefor purchase equipment for a bureau of criminal identification, such as cameras, finger print cards, inks, chemicals, microscopes, radio and laboratory equipment, filing cards, filing cabinets, tear gas and other equipment in keeping with the system in use by the Department of Public Safety of this State, or the United States Department of Justice and/or Bureau of Criminal Identification.

"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...."

Article 26 of the Code of Criminal Procedure reads as follows:

"The county attorneys shall attend the terms of all courts in his county below the grade of district court, and shall represent the State in all criminal cases under examination or prosecution in said county; and in the absence of the district attorney he shall represent the State alone, or when requested, shall aid the district attorney in the prosecution of any case in behalf of the State in the district court, and in such cases he shall receive all or one-half of the fees allowed by law to district attorneys, according as he acted alone or jointly. In such cases he shall receive all or one-half of the fees allowed by law to the district attorney whose duties he performs, or assists in performing, but shall receive no part of the constitutional salary allowed to such district attorney, according as he acted alone or jointly; provided that fees collected by the county attorney from the state for such services shall be deducted by the Comptroller of Public Accounts from the fees which otherwise would have been paid to the district attorney had he represented the State alone; provided further this article shall not be construed as inhibiting any county attorney from voluntarily, with the consent of the district attorney, assisting the district attorney in the performance of his respective duties, without compensation."

Article 5, Section 21 of the State Constitution reads, in part, as follows:

"....The county attorneys shall represent

the State in all cases in the district and inferior courts in their respective counties; but if any county shall be included in a district in which there shall be a district attorney, the respective duties of district attorneys and county attorneys shall in such counties be regulated by the Legislature. The Legislature may provide for the election of district attorneys in such districts, as may be deemed necessary, and make provisions for the compensation of district attorneys, and county attorneys; provided, district attorneys shall receive an annual salary of five hundred dollars, to be paid by the State, and such fees, commissions and perquisites as may be provided by law. County attorneys shall receive as compensation only such fees, commissions and perquisites as may be prescribed by law."

We are informed by the Comptroller's office that Liberty County is in the seventy-fifth judicial district which is composed of four counties, and that such judicial district has a duly elected, qualified and acting district attorney.

In the case of *Voges vs. Sheppard*, 67 SW 2nd 856, it was held that the county attorney in judicial districts composed of two or more counties was not entitled to fees for assisting district attorney and obtaining final conviction for felonies in district court, nor for representing state, during district attorney's absence, in habeas corpus proceedings.

Article 25, Code of Criminal Procedure, reads as follows:

"Each district attorney shall represent the State in all criminal cases in the district courts of his district, except in cases where he has been, before his election, employed adversely. When any criminal proceeding is had before an examining court in his district or before a judge upon habeas corpus,

and he is notified of the same, and is at the time within the county where such proceeding is had, he shall represent the State therein, unless prevented by other official duties."

We quote from the case of *Voges vs. Sheppard*, supra, as follows:

"It is at once apparent that a purpose of Article 1025 was to respond to the call of Article 26 for compensation to the county attorney for the services prescribed by the latter statute as a subject for compensation. There is little doubt that in naming that officer, along with the district attorney, as a beneficiary of the fees prescribed in Article 1025, the Legislature had in immediate contemplation the provisions of the other article regarding the compensation of the county attorney in felony trials, and which, in express terms, limit such compensation to 'fees allowed by law to district attorneys.' It is thus seen that the right of the relator to fees in cases of felony conviction, as prescribed in Article 1025, depends on whether such fees are allowed to the district attorney of the district which embraces Wilson county. That said district attorney is not allowed said fees is plainly disclosed by the provisions of Article 1021; for the last-named article provides, in substance, that a district attorney, in a district composed of two or more counties, shall receive a per diem compensation, depending upon his attendance upon the session of the court in the necessary performance of his official duty.....

"In regard to compensation for the county attorney in habeas corpus cases, the situation is materially the same as the other. Except Article 1025, there is no statute which provides compensation for that officer in a habeas corpus

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case involving a felony, and, as we have seen, the statute mentioned relates exclusively to services for which the district attorney, if he, instead of the county attorney, performed them, would be entitled to receive the fees there provided."

On June 17th and 22, 1936, this department held in opinions written by Hon. Joe J. Alsup, Assistant Attorney General, addressed to L. O. Orsborn, County Attorney, Canton, Texas, that a county attorney who was compensated on an annual salary basis could not claim traveling expense as a legal expense of such office.

We quote from Texas Jurisprudence, Vol. 34, page 544 as follows:

"The officer is entitled to credit for actual and necessary expenses incurred in the conduct of his office. The clause 'other necessary expenses' means other expenses similar to those expressly specified; it does not include money expended for the services of an assistant, though such services are necessary to enable the officer the better to discharge his duties;...."

Also see the cases of Harris County vs. Hammond, 203 SW 445; Cameron County vs. Fox, 42 SW 2nd 655, Casey vs. State, 289 SW 428.

In view of the foregoing authorities you are respectfully advised that it is the opinion of this department that the county acting through its commissioners' court would not have the authority to reimburse the county attorney who is compensated on an annual salary basis for expenses incurred while investigating criminal felony cases.

Trusting that the foregoing fully answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams  
Assistant

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APPROVED AUG 31, 1939

*Fred. Han*  
ATTORNEY GENERAL OF TEXAS