



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable D. Richard Voges
County Attorney
Wilson County
Floresville, Texas

Dear Sir:

Opinion No. 0-1284
Re: Sheriff's - Fee System -
Telephone Expense - Auto-
mobile Expense.

Your request for opinion upon the following questions:

"1. Can the Commissioners' Court of Wilson County, pay the Sheriff, monthly, out of the general funds of the County, the necessary and actual expense for telephone?

"2. Can the Commissioners' Court of Wilson County, pay the Sheriff, monthly, a certain sum for the maintenance and up-keep of a County Automobile, furnished the Sheriff by the County for his official services?

You advise in your letter that Wilson County, Texas is operating under the fee system and that its officers are compensated on a fee basis. You further advise that the Sheriff of your County is paid monthly the sum of Seventy-five (\$75.00) Dollars as an Ex-officio Salary by virtue of Article 3934, Revised Civil Statutes of Texas.

Article 3899 (a), Revised Civil Statutes of Texas, reads as follows:

"At the close of each month of his tenure of office each officer named herein

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who is compensated on a fee basis shall make as part of the report now required by law, an itemized and sworn statement of all the actual and necessary expenses incurred by him in the conduct of his office, such as stationery, stamps, telephone, premiums on officials' bonds, including the cost of surety bonds for his Deputies, premium on fire, burglary, theft, robbery insurance protecting public funds, traveling expenses and other necessary 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. If such expenses be incurred in connection with any particular case, such statement shall name such case. Such expense account shall be subject to the audit of the County Auditor, if any, otherwise by the Commissioners' Court; and if it appears that any item of such expense was not incurred by such officer or such item was not a necessary expense of office, such item shall be by such auditor or court rejected, in which case the collections of such item may be adjudicated in any court of competent jurisdiction. The amount of salaries paid to Assistants and Deputies shall also be clearly shown by such officer, giving the name, position and amount paid each; and in no event shall any officer show any greater amount than actually paid any such Assistant or Deputy. The amount of such expenses, together with the amount of salaries paid to Assistants, Deputies and Clerks shall be paid out of the fees earned by such officer. The

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Commissioners' Court of the county of the Sheriff's residence may, upon the written and sworn application of the Sheriff stating the necessity therefor, allow one or more automobiles to be used by the Sheriff in the discharge of his official duties, which, if purchased by the County, shall be bought in the manner prescribed by law for the purchase of supplies and paid for out of the General Fund of the county and they shall be and remain the property of the county. The expense of maintenance, depreciation and operation of such automobiles as may be allowed, whether purchased by the county or owned by the Sheriff or his Deputies personally, shall be paid for by the Sheriff and the amount thereof shall be reported by the Sheriff, on the report above mentioned, in the same manner as herein provided for other expenses."

Article 3891, Revised Civil Statutes of Texas, reads, in part, as follows:

"Each officer named in this Chapter shall first out of the current fees of his office pay or be paid the amount allowed him under the provisions of Article 3883, together with the salaries of his assistants and deputies, and authorized expenses under Article 3899, and the amount necessary to cover costs of premium on whatever surety bond may be required by law. If the current fees of such office collected in any year be more than the amount needed to pay the amounts above specified, same shall be deemed excess fees, and shall be disposed of in the manner hereinafter provided.

"In counties containing twenty-five thousand (25,000) or less inhabitants, District and County officers named herein shall retain one-third of such excess fees until such one-third, together with the amounts specified in Article 3883, amounts to Three Thousand Dollars (\$3,000). Precinct officers shall retain one-third until such

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one-third, together with the amount specified in Article 3883, amounts to Fourteen Hundred Dollars (\$1400)."

* * * * *

This Department has repeatedly ruled that where county officers are compensated upon a fee basis that expenses incident to county office must be paid from current fees belonging to said office. See opinion dated July 13, 1934, written by Hon. Julius F. Franki, Assistant Attorney General; and many other opinions of this Department.

We concur with you in your opinion and wish to thank you for your very able brief which has assisted us in passing upon this question.

We agree with you that Senate Concurrent Resolution No. 40, of the 44th Texas Legislature, passed in 1935, has no bearing on Article 3899, Revised Civil Statutes of Texas, which was amended in 1937.

You are therefore respectfully advised that it is the opinion of this Department that the Commissioners' Court of Wilson County, Texas, a County operating upon a fee basis, may not pay the County Sheriff, monthly, the necessary and actual expenses for telephone out of the General Fund of the County. Such Sheriff however may pay such expense out of his current fees of office.

You are further respectfully advised that it is the opinion of this Department that the Commissioners' Court of Wilson County, Texas, a County operating upon a fee basis, may not pay the County Sheriff, monthly, a certain sum for the maintenance and up-keep of a county automobile, furnished the Sheriff by the County for his official duties, out of the General Fund of the County. Article 3899 (a) expressly provides that the expense of maintenance, depreciation and operation of such automobiles as may be allowed, whether purchased by the county or owned by the Sheriff or his deputies personally, shall be paid for by the Sheriff and the amount thereof shall be reported by the Sheriff, on the report above mentioned, in the same manner as is provided therein for other expenses.

Trusting that this satisfactorily answers your inquiry

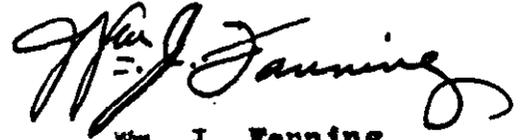
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and with best regards, we are

Very truly yours

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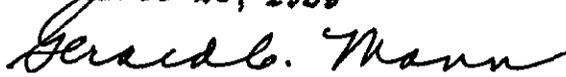
By



Wm. J. Fanning
Assistant

WJF:RS

APPROVED AUG 26, 1939



ATTORNEY GENERAL OF TEXAS

