



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERALHonorable Jack Weich
County Attorney
Cameron County
Brownsville, Texas

Dear Sir:

Attention: Mr. Wm. Scanlan

Opinion No. O-1354

Re: Can the Commissioners' Court
abolish the office of County
Treasurer in Cameron County?
If not, can it fix the county
treasurer's compensation on
a commission basis for a maxi-
mum amount of less than that
fixed by statute?

Your request for our opinion on the above stated question has been received by this department.

Your letter reads, in part, as follows:

"For your information upon the facts relative to the issues, please be advised that Cameron County, Texas, has a population in excess of Seventy-five Thousand (75,000) and not more than Eighty Thousand (80,000) inhabitants according to the preceding United States census, and has voted road or road and bridge bonds in excess of Six Million (\$6,000,000) Dollars, and flood protection bonds in excess of One Million (\$1,000,000) Dollars. The office of County Treasurer of Cameron County, Texas, earned, in the year 1935, as fees, the sum of Two Thousand, Seven Hundred (\$2,700) Dollars."

Section 44 of Article 16 of the Texas Constitution reads as follows:

"The Legislature shall prescribe the duties and provide for the election by the qualified voters of each county in this State, of a county

Honorable Jack Welch, Page 2

treasurer and a county surveyor, who shall have an office at the county seat, and hold their office for two years, and until their successors are qualified; and shall have such compensation as may be provided by law."

The office of county treasurer is one of the offices created by the Constitution.

On January 21, 1936, this department held in an opinion written by Honorable Joe J. Alsup, Assistant Attorney General, addressed to Esco Walter, County Attorney, Abilene, Texas, that a commissioners' court is without power to abolish the office of county treasurer.

We quote from Texas Jurisprudence, Vol. 54, p. 387, as follows:

"The Legislature is, of course, without power to abolish offices created by the Constitution, but may do away with officers of its own creation though it thereby interferes with the terms of the incumbents; and if they authorize the commissioners' court of any county to abolish an office insofar as that county is concerned, whether the matter of filling such office in the first instance is left to the court's discretion."

In answer to your first question you are respectfully advised that it is the opinion of this department that the commissioners' court of Cameron County does not have the power or legal authority to abolish the office of County Treasurer in said county.

Considering your second question, we quote certain statutes or portions thereof which we think applicable to the question involved.

Article 3943, Revised Civil Statutes, as amended, reads in part as follows:

"The commissions allowed to any County Treasurer shall not exceed Two Thousand Dollars (\$2,000) annually; provided, that in all counties in which the assessed value of the property of such counties shall be One Hundred Million Dollars (\$100,000,000) or more as shown

Honorable Jack Welch, Page 3

by the preceding assessment roll, the Treasurers thereof shall receive as their commissions a sum not exceeding Two Thousand, Seven Hundred Dollars (\$2,700) annually; provided that in all counties having a population of not less than seventy-five thousand (75,000) and not more than eighty thousand (80,000) according to the preceding United States Census, in which counties, road, or road and bridge bonds in the amount of Six Million Dollars (\$6,000,000) or more and flood protection bonds in the amount of One Million Dollars (\$1,000,000) or more have been voted by the people, the Treasurers thereof shall receive as their commissions a sum not to exceed Two Thousand, Seven Hundred Dollars (\$2,700) annually; and shall be allowed an assistant at a salary not to exceed One Thousand, Two Hundred Dollars (\$1,200) annually;

* * *

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 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 the laws existing on August 24, 1935 * * *."

Articles 3841 and 3842, Revised Civil Statutes, and the authorities mentioned in your brief do not apply to those counties coming within the population bracket set out in Section 13 of Article 3912e, Cameron County does come within the population bracket mentioned in Section 13, Article 3912e, therefore this statute applies to Cameron County.

Honorable Jack Welch, Page 4

You are respectfully advised that it is the opinion of this department that the commissioners' court of Cameron County cannot fix the county treasurer's compensation on a commission basis but such salary must not be less than the total sum earned as compensation by the county treasurer 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.

Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

AW:LM

APPROVED OCT 2, 1939

Graded. Mann

ATTORNEY GENERAL OF TEXAS

