



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable James W. Strawn
County Attorney
Willacy County
Raymondville, Texas

Dear Sir:

Opinion No. 0-1481
Re: Whether the Commissioners' Court is authorized at any time, without request or consent of the sheriff, to entirely eliminate the salary to be paid to certain deputies or reduce the amount to be paid to other deputies.

Your letter of September 21, 1939, requesting an opinion from this Department, contains the following request:

"Where the sheriff of a county at the first part of the year submits a list of the deputies which he will need and the amount each is to be paid (together with the other information required), and said application is approved by the Commissioner's Court, may the Commissioner's Court at any time during that year without the request or consent of the sheriff entirely eliminate the salary to be paid to certain deputies, or reduce the amount to be paid to other deputies, or raise the amount to be paid to still other deputies?"

Article 6869, Revised Civil Statutes, as amended, provides:

"Sheriffs shall have the power, by writing, to appoint one or more deputies for their respective counties, to continue in office during the pleasure of the sheriff, who shall have power and authority to perform all the acts and duties

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of their principals; and every person so appointed shall, before he enters upon the duties of his office, take and subscribe to the official oath, which shall be indorsed on his appointment, together with the certificate of the officer administering the same; and such appointment and oath shall be recorded in the office of the County Clerk and deposited in said office. The number of deputies appointed by the sheriff of any one county shall be limited to not exceeding three in the Justice precinct in which is located the county site of such county, and one in each Justice precinct, and a list of these appointments shall be posted up in a conspicuous place in the Clerk's office. An indictment for a felony of any deputy sheriff appointed shall operate as revocation of his appointment as such deputy sheriff. Provided further, that if in the opinion of the Commissioners' Court fees of the sheriff's office are not sufficient to justify the payment of salaries of such deputies, the Commissioners' Court shall have the power to pay the same out of the General Fund of said county."

Article 3902, Revised Civil Statutes, as amended, and applicable to Willacy County, in part, provides:

"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;

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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.

"1. In counties having a population of twenty-five thousand (25,000) or less inhabitants, first assistant or chief deputy not to exceed Eighteen Hundred (\$1800.00) Dollars per annum; other assistants, deputies or clerks not to exceed Fifteen Hundred (\$1500.00) Dollars per annum each. * * **

Under the provisions of Article 8869, supra, the sheriff is given the power, by writing, to appoint one or more deputies for their respective counties; to continue in office during the pleasure of the sheriff and such is tantamount to a provision that both appointment and tenure of office are discretionary with the sheriff. - Murray v. Harris (C. C. A.) 112 S. W. (2d) 1091.

It is apparent under the foregoing authorities, that the commissioners' court can limit the number and salary of sheriff's deputies, but said court has no power over the naming of the individuals to be appointed, and are especially prohibited from attempting any such influence. - Harris County et al v. Smith et al, 81 S. W. (2d) 537 (writ refused).

The commissioners' court is vested with full authority to manage and direct the financial affairs of the county. Such court is given full authority over the expenditure of funds for salaries to be paid deputies employed in the office of the sheriff within the maximum limits fixed by law. The appointment, by application to and with the consent of the commissioners' court is only to be effected after a proper order authorizing same is made by the commissioners' court.

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Deputies, clerks and assistants have no vested right as to any fixed salary within the maximum limits authorized by Article 3902, supra, as against the authority of the commissioners' court to change same or eliminate the entire salary of deputies at any time during the year so long as its orders are not retrospective nor any reduction or increase is made in salaries earned for past services.

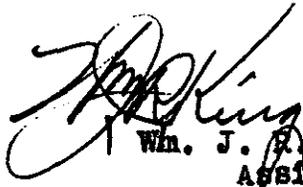
It is, therefore, the opinion of this department that exclusive authority and control during the year over the salaries of deputies duly appointed by the sheriff, as authorized and fixed under the provisions of Article 3902, Vernon's Revised Civil Statutes as amended, is vested in the commissioners' court and such court may exercise such authority without the consent and approval of the sheriff.

Trusting the above answers your request, we are

Yours very truly

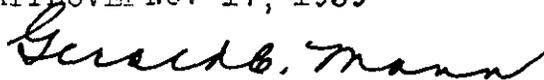
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By


Wm. J. King
Assistant

WmK: jm

APPROVED NOV 17, 1939



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