



THE ATTORNEY GENERAL
OF TEXAS

Gerald C. Mann

~~JOHN D. HENNING~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

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

Opinion No. 0-1874
Re: Can a clerk be hired by the
county attorney of Liberty County?
Is the office helper described a
clerk?

Dear Sir:

This will acknowledge receipt of your letter of January 19, 1940, wherein you request the opinion of this department on the above stated questions.

Your letter reads, in part, as follows:

"Liberty County is a County having less than 25,000 inhabitants according to the last Federal census, however, it operates on a salary basis and pays its officers upon a salary basis. The County Attorney of this County needs a clerk or secretary, for the reason that there are numerous clerical duties to be performed, such as keeping the minutes of said office, and the records and proceedings of the Justice and County Courts and of keeping the records and proceedings of the County Attorney's Office, and of the Grand Jury, when in session, draw complaints for both County and Justice Courts, and keeping a record of the County Court Criminal cases, to keep a file on criminal minutes and both civil matters concerning the County in which the County Attorney may be involved, to write letters, dispatches, orders, public and private papers, records and the like of the County, to take confessions and numerous other duties of a like nature. As such, the County Attorney actually has need of a helper who may be termed a clerk or secretary to perform the above-mentioned duties.

"The question arises as to whether or not the County Attorney is entitled to have one employed under the authorization of the County Commissioners' Court under Article 3902 ***"

Article 3902, Vernon's Civil Annotated Statutes, read, in part, 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:

"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."

Webster's New International Dictionary defines the word, "clerk" as follows:

"One employed to keep records or accounts, or to have charge of correspondence, or the like; a scribe; an accountant; as, the clerk of the court; a townclerk; a bank clerk. Clerk is an indefinite term of wide application, and may include employees clothed with authority to act in various weighty matters for their employers,

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such as a teller of a bank or the secretary of a corporation."

Bouvier's Law Dictionary defines the word "clerk" as-

"A person employed in an office, public or private, for keeping records or accounts. His business is to write or register, in proper form, the transaction of the tribunal or body to which he belongs. Some clerks, however, have little or no writing to do in their office and the clerk of the market, whose duties are confined chiefly to superintending the market. This is a common use of the word at the present day, and is a very ancient signification, being derived probably from the office of the clerics who attended, among other duties, to the provisioning the King's household.

"A person serving a practicing solicitor under binding articles in England, for the purpose of being admitted to practice as a solicitor.

"In New England used to designate a corporation official who performs some of the duties of the secretary."

You are respectfully advised that it is the opinion of this department that when a county attorney complies with the terms of Article 3902, supra, a clerk may be appointed for the county attorney.

In answer to your second question you are advised that it is wholly within the discretion of the commissioners' court to determine whether or not the duties to be performed by the person employed constitute the duties of a clerk.

Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly
ATTORNEY GENERAL OF TEXAS
By /s/ Ardell Williams
Ardell Williams, Assistant

APPROVED JAN 27, 1940
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

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