



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Hon. A. M. Turney  
County Attorney  
Brewster County  
Alpine, Texas

Dear Sir:

Opinion No. 0-1923

Re: Can the County-District Clerk and the Sheriff-Tax Assessor-Collector, both of whom have deputies who have previously served the county for more than two continuous years, pay such deputies the additional amount of \$200.00 annually?

Your recent request for an opinion of this department on the above stated question has been received.

Article 3902, Vernon's Civil Annotated Statutes reads 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 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.

"1-a. In counties having a population of twenty-five thousand (25,000) inhabitants or less, according to the last preceding Federal Census, and whose tax values exceed One Hundred Million Dollars (\$100,000,000), according to the last approved tax rolls, the first assistant to the Tax Assessor and Collector and the first assistant to the County Clerk may each receive an annual salary of not to exceed Three Thousand Dollars (\$3,000) per annum, and the cashier to the Tax Assessor and Collector and the County Clerk may each receive an annual salary of not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum. The Tax Assessor and Collector shall designate in addition to the first assistant and cashier, two heads of departments, one to be in charge of assessing and one to be in charge of collecting in such counties, who may receive an annual salary of not to exceed Two Thousand, Four Hundred Dollars (\$2,400) per annum, and any additional assistants, deputies or clerks to the Tax Assessor and Collector or the County Clerk may receive an annual salary of not to ex-

ceed One Thousand, Eight Hundred Dollars (\$1,800) per annum. Added Acts 1939, 46th Leg., H.B. #657, §1.

"1a. In counties having a population of not less than nineteen thousand, eight hundred and fifty (19,850) and not more than nineteen thousand, eight hundred and ninety-five (19,895) inhabitants, according to the last preceding Federal Census, the Commissioners Court may approve the appointment of heads of departments, when necessary, and when additional allowance for salary is deemed necessary or justified by the Commissioners Court of such counties for heads of departments or chief deputies, a sum not to exceed Two Hundred Dollars (\$200) per annum may be allowed, in addition to the regular salary for such heads of departments or chief deputies, when such officers shall have previously served the county for not less than two (2) continuous years. As added Acts 1939, 46th Leg., H.B. #1030, §1.

". . .

"4a. In counties having a population of sixty thousand and one (60,001) and not more than one hundred thousand (100,000) inhabitants, according to the preceding Federal Census and containing a city of not less than fifty-two thousand (52,000) inhabitants according to the preceding Federal Census, heads of departments may be allowed by the Commissioners Court, when in their judgment such allowable is justified, the sum of Two Hundred Dollars (\$200) per annum in addition to the amount hereinbefore authorized to either First Assistant or Chief Deputy, or other Assistants, Deputies or Clerks, when such heads of departments sought to be appointed shall have previously served the county or political subdivision thereof for not less than two (2) continuous years; provided no heads of departments shall be created except where the persons ought to be appointed shall be in actual

charge of some department, with Deputies or Assistants, under his supervision, or a department approved by the Court, and only in offices capable of a bona fide subdivision into departments. As added Acts 1937, 45th Leg., p. 581, ch. 290, §1.

"5. In counties having a population of one hundred thousand and one (100,001) and not more than one hundred and fifty thousand (150,000) inhabitants, first assistant or chief deputy not to exceed Twenty-six Hundred (\$2600.00) Dollars per annum; heads of departments may be allowed by the Commissioners' Court, when in their judgment such allowance is justified, the sum of Two Hundred (\$200.00) Dollars per annum in addition to the amount herein allowed, when such heads of departments sought to be appointed shall have previously served the county or political subdivision thereof for not less than two continuous years; other assistants, deputies or clerks not to exceed Twenty-three Hundred (\$2300.00) Dollars per annum each. . . ."

The assessed tax valuation of property for Brewster County for the year 1939 was \$7,708,846.00. The population of said county, according to the last Federal Census, is 6,624 inhabitants.

Under the provisions of the above mentioned statute certain counties coming within a designated population bracket, the Commissioners' Court may approve the appointment of heads of departments, when necessary, and when additional allowance for salaries deemed necessary are justified by the Commissioners' Courts of such counties. For heads of departments or chief deputies a sum not to exceed \$200.00 per annum may be allowed, in addition to the regular salary for such heads of departments or chief deputies when such officers shall have previously served the county for not less than two continuous years. Also counties whose tax values exceed certain amounts as designated in the above mentioned statute, according to the last approved tax rolls, certain assistants as named therein are allowed the salaries as are provided in the statute.

Brewster County does not come within any of the

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above mentioned population brackets which would allow the Commissioners' Court to approve the appointment of heads of departments and allow additional salary for heads of departments or chief deputies in a sum not to exceed \$200.00 per annum, in addition to the regular salaries for such heads of departments or chief deputies, when such officers have previously served the county for not less than two continuous years. Also, the assessed tax valuation of Brewster County is not such as would authorize additional allowance for salaries of deputies.

The provision of the statute that applies to the compensation to be allowed deputies, assistants or clerks for their services in Brewster County is Section 1 of Article 3902, supra, which provides:

"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."

In view of the foregoing statute, your question is answered in the negative.

Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (Signed)  
Ardell Williams  
Assistant

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APPROVED: February 9, 1940  
W. F. Moore (Signed)  
FIRST ASSISTANT ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE BY B.W.B. CHAIRMAN