



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Earl B. Stinson
County Attorney
Rockwall County
Rockwall, Texas

Dear Sir:

Opinion No. O-2071

Re: Can the County Attorney deduct the \$200.00 earned and collected by the Assistant County Attorney in December, 1939, as salary paid to an assistant?

This will acknowledge receipt of your letter of March 11, 1940, requesting an opinion of this department on the above stated question.

We quote from your letter as follows:

"Honorable H. M. Wade was county attorney of Rockwall County during 1939. On December 1, 1939 he left for Washington to enter the F.B.I. At such time he appointed me as his assistant. The appointment was confirmed by the commissioners court. We agreed that I was to have all of the fees which the office earned during the time I acted as his assistant. The office earned over three thousand dollars during 1939. I earned and collected about two hundred dollars during the month of December. In your opinion, can Mr. Wade deduct this amount as salary paid to an assistant?"

The County Attorney in Rockwall County performs the duties of county attorney and district attorney and is compensated on a fee basis. The population of Rockwall County, according to the last Federal census is seven thousand six hundred and fifty eight (7,658) inhabitants.

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Article 331, Vernon's Annotated Civil Statutes, reads as follows:

"County attorneys, by consent of the commissioners court, shall have power to appoint in writing one or more assistants, not to exceed three, for their respective counties who shall have the same powers, authority and qualifications as their principals, at whose will they shall hold office. Before entering on the duties of their offices, they shall each take the official oath which shall be indorsed upon their appointment, which oaths and appointments shall be recorded and deposited in the county clerk's office."

Article 3891, Vernon's Annotated Civil Statutes, as amended, 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 one-third, together with the amount specified in Article 3883, amounts to Fourteen Hundred Dollars (\$1400).

** * *

"The compensations, limitations and maxi-

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mums herein fixed in this Act for officers shall include and apply to all officers mentioned herein in each and every county of this State, and it is hereby declared to be the intention of the Legislature that the provisions of this Act shall apply to each of said officers, and any special or general law inconsistent with the provisions hereof is hereby expressly repealed in so far as the same may be inconsistent with this Act.

"The compensation, limitations and maximums herein fixed shall also apply to all fees and compensation whatsoever collected by said officers in their official capacity, whether accountable as fees of office under the present law, and any law, general or special, to the contrary is hereby expressly repealed. The only kind and character of compensation exempt from the provisions of this Act shall be rewards received by Sheriffs for apprehension of criminals or fugitives from justice and for the recovery of stolen property, and moneys received by County Judges and Justices of the Peace for performing marriage ceremonies, which sum shall not be accountable for and not required to be reported as fees of office."

Article 3902, Vernon's Annotated Civil 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 the probable disbursements which shall include all salaries and expenses of said office:

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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 Commissioner's 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."

It is to be noted that Article 3902, supra, which is a later enactment of the Legislature, does not expressly repeal Article 331, supra; however the two statutes under consideration herein, are in pari materia, and their provisions in such respect cannot be reconciled. In such circumstances, "the older statute will be held to be repealed by implication to the extent of the conflict" * *. It is presumed that the Legislature intended to repeal all laws and parts of laws clearly inconsistent with its later Acts." 39 Texas Juris. p. 145, sec. 77.

In this connection we quote from the case of Meek v. Wheeler County, 125 S. W. (2d) 331, as follows:

"In the case of Bryan v. Sundberg, 5 Tex. 418, 424, the Supreme Court of this State announced the rule which, we think, is decisive of the issue before us. Such rule is in the

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following language: 'It undoubtedly is true that a construction which repeals former statutes, by implication, is not to be favored; and it is also true that statutes in pari materia, and related to the same subject, are to be taken and construed together; because it is to be inferred that they had one object in view, and were intended to be considered as constituting one entire, and harmonious system. But when the new statute, in itself, comprehends the entire subject, and creates a new, entire, and independent system, respecting that subject matter, it is universally held to repeal and supercede all previous systems and laws respecting the subject matter.'

We think that Article 3902, supra, is controlling in the appointment of assistant county attorneys, and limits their compensation as stated therein. Said Article specifically provides that the maximum compensation that can be allowed a first assistant or a deputy in counties having a population of less than twenty-five thousand inhabitants "shall not exceed Eighteen Hundred Dollars (\$1800.00) per annum." The maximum compensation provided for other deputies, assistants and clerks shall not exceed Fifteen Hundred Dollars (\$1500.00) per annum.

As above indicated, Rockwall County has a population of under twenty-five thousand inhabitants; therefore the maximum compensation that could be allowed the first assistant county attorney would be eighteen hundred dollars (\$1800.00) per annum. Said assistant served as the assistant county attorney for only one month and could not be entitled to more than \$150.00 as compensation for his services. The county attorney is entitled to deduct the salaries of his assistants and deputies and authorized expenses under Article 3899, and the amount necessary to cover cost of premium on whatever surety bond may be required by law under Article 3891, supra.

In view of the foregoing authorities, you are respectfully advised that it is the opinion of this department that the county attorney can legally deduct the sum of One Hundred

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and Fifty (\$150.00) Dollars paid the assistant county attorney in arriving at his maximum compensation allowed by Articles 3883 and 3891, supra.

Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

AW:RS

APPROVED MAR 24, 1940

George B. Mann

ATTORNEY GENERAL OF TEXAS

