



THE ATTORNEY GENERAL OF TEXAS

GERALD C. MANN

~~JOHN DEN SHERIDAN~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable C. J. Wilde
County Auditor
Nueces County
Corpus Christi, Texas

Dear Sir:

Opinion No. O-2128
Re: Contract between B. M.
Estes and Nueces County.

In your letter of March 15, 1940, you request our opinion as to whether the Commissioners' Court of Nueces County as first party may lawfully enter into contract with B. M. Estes, as second party, for the performance of certain services as set forth in the contract as follows:

"Party of the First Part being desirous of employing a person of technical knowledge, experience and ability to furnish expert advice and information in the valuation of new property in the County, as well as increases in value and additions to property already in Nueces County, Texas, and to work in cooperation with the Board of Equalization, Commissioners' Court, and the Tax Assessor-Collector in the continuation of the present system of valuations used in Nueces County, which is known as the Stoner System, and being satisfied that Party of the Second Part is well qualified for this position; the parties hereto do contract as follows:

"Party of the Second Part does hereby contract to faithfully and diligently, during all reasonable office hours, and using his technical knowledge, experience and ability furnish expert advice and information in the valuation of newproperty in the County, as well as increases in value and additions to property already in Nueces County, Texas, and to work in cooperation with the Board of Equalization, Commissioners' Court, and the Tax Assessor-Collector in the continuation of the present system of valuation used in Nueces County, which is known as the Stoner System."

The contract provides for a consideration of \$225.00 per month to be paid to Mr. Estes for a period of one year, and the county also to furnish office space, clerical help and traveling expenses.

As we understand you, this employment is aside from and in addition to the deputies allowed by law for the tax assessor-collector, and the compensation thus to be paid exceeds that permitted by statute to be paid such deputies.

In the case of Roper v. Hall, 280 S.W. 289, the Waco Court of Civil Appeals upheld the power of commissioners' courts to make special contracts with experts for the proper assessment and valuation of oil properties. However, in our opinion, the contract with which we are now concerned is not such a one as was under consideration in the Roper case.

Clearly a large part, if not all, of the services required of Mr. Estes in the instant contract are services which the tax assessor-collector is privileged as well as obligated to perform. We quote from the opinion of the Galveston Court of Civil Appeals in Marquart v. Harris County, 117 S.W. (2d) 494, involving a similar problem, as follows:

"While the Commissioners' Court may validly employ 'skilled experts' to value for taxation purposes property in special instances, where technical equipment is required, since this contract -- by its express terms -- embraces a valuation of the entire taxable property of Harris County, as reflected by its tax records, it necessarily supersedes the powers, duties, and functions of the tax assessor and collector, and since those duties are devolved by law upon him, such an attempted employment by that body of other persons to, in the first instance, perform such duties instead, is an expenditure of public funds for an unauthorized purpose."

Our answer to your question is in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Glenn R. Lewis

Glenn R. Lewis
Assistant

GRL:LM:egw

APPROVED APR 16, 1940
/s/ GERALD C. MANN
ATTORNEY GENERAL OF TEXAS

APPROVED
Opinion Committee
BY B W B
Chairman