



THE ATTORNEY GENERAL OF TEXAS

GERALD C. MANN

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Honorable Roland Boyd
County Attorney
Collin County
McKinney, Texas

Dear Sir:

Attention Mr. Ewight Whitwell

Opinion No. 0-2332

Re: Should fees of officers be
deposited with the county
depository each day instead
of every thirty days?

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

Your letter reads, in part, as follows:

"Our local county depository has made the contention that all fees of officers should be deposited with them as they are collected by the officer instead of the officer waiting until the end of each month and filing his report and making his remittance to the County Auditor who then deposits the fees in the county depository. In other words, the depository wants this money deposited with them each day instead of waiting 30 days.

"In this connection I call your attention to Art. 3912E of the Civil Statutes, Subsection 5, which provides that it should be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official service performed by them: as and when such fees are collected they shall be deposited in the officers salary fund. In the same article, subsection 0, the statute says that officers receiving an annual salary as compensation for their services

shall on or before the 5th day of each month file with the County Auditor on forms prescribed by him a detailed report of all fees collected by him during the proceeding month and shall forthwith pay into the officers' salary fund for his office all fees collected by him during said month.

"Also in Subsection P of the same statute we find this language: 'Where any officer receives a salary payable from the salary fund created for such officer, all fees, commissions and other compensation received by him in his official capacity shall be by him deposited and paid monthly or oftener into the salary fund created for such officer and such remittance shall be accompanied by his report thereof.'

"These last two above quoted provisions appear to apply only to counties in excess of 190,000 population as shown in Section 19 of the act. If our conclusion on that is correct then the only language applying to our county would be the language first quoted above from section 5 and this apparently could be construed to mean that the officer would have to report and pay their fees each day.

"Our officers have been filing the monthly report and remittance system under the supervision and direction of our County Auditor. We do not find any court decisions under this statute upon this question and are therefore unable to furnish a brief of the matter, but it occurs to us that in as much as the County depository is only entitled to have all county funds deposited with it that the question to be decided is whether or not officers fees under the present salary set-up become county funds immediately upon being collected or whether they only become county funds at the end of a 30 day period when the officer reports the collections to the auditor."

Sections 4 and 5 of Article 3912e, Vernon's Annotated Civil Statutes, reads as follows:

"Sec. 4. In all counties of this State containing a population of less than one hundred and ninety thousand (190,000) inhabitants according to the last preceding Federal Census wherein the county

or precinct officers are compensated on a salary basis under the provisions of this act, there shall be created a fund to be known as the 'Officers' Salary Fund of _____ County, Texas.' Such fund shall be kept separate and apart from all other county funds, and shall be held and disbursed for the purpose of paying the salaries of officers and the salaries of deputies, assistants and clerks of officers who are drawing a salary from said fund under the provisions of this Act, and to pay the authorized expenses of thier offices. Such fund shall be deposited in the county depository and shall be protected to the same extend as other county funds.

"Sec. 5. It shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official service performed by them. As and when such fees are collected they shall be deposited in the Officers' Salary Fund or funds provided in this Act. In event the Commissioners' Court finds that the failure to collect any fee or commission was due to neglect on the part of the officer charged with the responsibility of collecting same, the amount of such fee or commission shall be deducted from the salary of such officer. Before any such deduction is made, the Commissioners' Court shall furnish such officer with an itemized statement of the uncollected fees with which his account is to be charged and shall notify such officer of the time and place for a hearing on same, to determine whether such officer was guilty of negligence, which time for hearing shall be at least ten days subsequent to the date of notice. Unless an officer is charged by law with the responsibility of collecting fees, the Commissioners' Court shall not in any event make any deductions from the authorized salary of such officer."

The two provisions of Article 3912a, quoted above, apply to all counties containing a population of less than 190,000 inhabitants according to the last preceding Federal census, wherein the county officers are compensated on a salary basis. Collin County has a population of 46,180 inhabitants according to the last preceding Federal census, and the county officials are compensated on an annual salary basis; therefore, the above quoted provisions would be applicable to said county.

In view of the foregoing statutes, you are respect-

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fully advised that it is the opinion of this department that when a county has selected a county depository in the manner required by law, all monies collected by various county officials, should, as and when collected, be deposited in the various funds to which they rightfully belong, in the county depository.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Ardell Williams
Assistant

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APPROVED MAY 20 1940
GERALD C. MANN
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE
BY BWF, CHAIRMAN