



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. J. B. Allred
County Auditor
Baylor County
612 City National Building
Wichita Falls, Texas

Dear Sir:

Opinion No. 0-2634
Re: Commissioners' Courts--
County Clerks--Postage
Expenses.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"Acting on my authority as county auditor of Baylor County I asked for and received an opinion numbered 0-1891 Re:

Can the commissioners' court allow the county clerk expenses for postage and extra help when such expenses represent an accumulation over a nine-year period? "The Commissioners' court of said county promptly refused to consider the claim after having received your opinion, as above numbered. But the county clerk now comes back with another claim which he does not claim is expenses of office, but that it is for accommodations to the court and the individual commissioners, etc. in mailing out warrants, etc. which he is not legally bound to do but does do for the convenience of the public and the public officials.

"The court is of the opinion that this also is not a legal liability of the county, and therefore has asked me to submit the county clerk's bill to you and ask that you give an opinion thereon."

We have also carefully examined the claim you enclosed in your letter. The claim is for postage expense

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at the rate of \$1.50 per month for the past 8 years for a total of \$144.00. The claim is not itemized. The statement is made in the claim that the postage was "used for mailing warrants for county in R & B Fund, C & J Fund and Hospital Fund".

Opinion No. O-1891 of this department passed upon this claim based upon the fact situation presented in the request. The fact situation passed upon in opinion No. O-1891, was as follows, quoting from the letter of request:

"The Commissioners' Court of Baylor County has asked me, as their County Auditor, to get a ruling from you relative to payment of expenses of their county clerk over a period running back as far as nine years for extra help and postage. It is my understanding that this officer's fees are supposed to cover any extra help he uses in his office, as well as the expense for postage. During the time I have been county auditor in Baylor County, which is only part time work, since the county is not large enough to require full time, the county has paid this officer ex-officio in an amount for county and district clerk averaging around \$1400.00 per year, and it seems that these expenses should have been taken care of by the officer from these payments. Also, in view of the fact that the officer is expected to make an expense statement monthly to the court, which he has done and in which he has not claimed these expenses, it is my belief that he is not entitled to claim them at this late date.

"I would like to have your opinion on this matter for the full period or any part of the nine year period."

Opinion No. O-1891, held that the county was not liable for the expenses claimed. We quote from the opinion as follows:

"The county has paid the county clerk ex-officio compensation in the approximate sum of \$1400.00 per year during the above mentioned nine year period. The Commissioners' Court is debarred from allowing compensation for ex officio services to county officials when the compensation and excess fees which they are allowed to retain shall reach the maximum provided by law. As above stated, county officials who are compensated on a fee basis must pay their expenses out of fees earned

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by their respective offices, and the commissioners' court is without authority to allow payment of the same by the county.

"You are respectfully advised that it is the opinion of this department that the above mentioned expenses of the county clerk should have been paid by him from fees of office and the county has no authority to pay such expenses."

We think Opinion No. O-1891 of this department is correct under the facts stated and we adhere to that ruling. We also call your attention to the recent case of Pierson vs. Galveston County, 131 S. W. (2d) Page 27, which supports our conclusion reached in Opinion No. O-1891.

In your request for opinion upon the claim as now presented you state, among other things, as follows:

" the county clerk now comes back with another claim which he does not claim is expenses of office, but that it is for accommodations to the court and the individual commissioners, etc., in making out warrants, etc., which he is not legally bound to do but does so for the convenience of the public and the public officials."

You are therefore respectfully advised it is the opinion of this department, under the facts stated in your letter, that Taylor County, Texas is not legally liable for the claim described in your letter, and that same should not be approved.

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY

Wm. J. Fanning

Wm. J. Fanning
Assistant

APPROVED AUG 26, 1940

J. B. Allred

DEPUTY ATTORNEY GENERAL

WJF:jm

Encl.

