



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN
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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Hon. Claud Wolf
County Auditor
Howard County
Big Spring, Texas

Dear Sir:

Opinion No. 0-2684
Re: County Auditors -
Special Auditors

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

"I will appreciate your opinion as to whether or not I would be permitted to serve as auditor for more than one county at the same time, provided the additional county should come under the provisions of Art. 1646 - Vernons Civil Statutes of Texas."

Article 16, Section 40 of our State Constitution, reads as follows:

"No person shall hold or exercise, at the same time, more than one civil office of emolument, except that of justice of peace, county commissioner, notary public and postmaster, officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States, and enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, and retired officers of the United States Army, Navy, and Marine Corps, and retired warrant officers, and retired enlisted men of the United States Army, Navy, and Marine Corps, unless otherwise specially provided herein. Provided, that nothing in this Constitution shall be construed to prohibit an officer or enlisted man of the National Guard, and the National Guard Reserve, or an officer in the Officers Reserve Corps of the United States, or an enlisted man in the Organized Reserves of the United States; or retired officers of the United States Army, Navy, and Marine Corps, and retired warrant

officers, and retired enlisted men of the United States Army, Navy, and Marine Corps, from holding in conjunction with such office any other office or position of honor, trust or profit, under this State of the United States, or from voting at any Election; General, Special or Primary, in this State when otherwise qualified."

Article 1641, Vernon's Annotated Texas Civil Statutes, reads as follows:

"Any commissioners court, when in its judgment an imperative public necessity exists therefor, shall have authority to employ a disinterested, competent and expert public accountant to audit all or any part of the books, records, or accounts of the county; or of any district, county or precinct officers, agents or employees, including auditors of the counties, and all governmental units of the county, hospitals, farms, and other institutions of the county kept and maintained at public expense, as well as for all matters relating to or affecting the fiscal affairs of the county. The resolution providing for such audit shall recite the reasons and necessity existing therefor such as that in the judgment of said court there exists official misconduct, will full omission or negligence in records and reports, misapplication, conversion or retention of public funds, failure in keeping accounts, making reports and accounting for public funds by any officer, agent or employee of the district, county or precinct, including depositories, hospitals, and other public institutions maintained for the public benefit, and at public expense; or that in the judgment of the court it is necessary that it have the information sought to enable it to determine and fix proper appropriation and expenditure of public moneys, and to ascertain and fix a just and proper tax levy. The said resolution may be presented in writing at any regular or called session of the commissioners' Court, but shall lie over to the next regular term of said court, and shall be published in one issue of a newspaper of general circulation published in the county; provided if there be no such newspaper published in the county, then notice thereof shall be posted in three public places in said county, one of which shall be at the court house door, for at least ten days prior to its adoption. At such next regular term said resolution shall be adopted by a majority vote of the four commissioners' of the court and approved by the county judge. Any contract entered into by said commissioners'

court for the audit provided herein shall be made in accordance with the statutes applicable to the letting of contracts by said court, payment for which may be made out of the public funds of the county in accordance with said statutes. The authority conferred on county auditors contained in this title as well as other provisions of statutes relating to district, county and precinct finances and accounts thereof shall be held subordinate to the powers given herein to the commissioners' court."

Article 1645, Vernon's Annotated Texas Civil Statutes, reads in part as follows:

"In any county having a population of thirty-five thousand (35,000) inhabitants, or over, according to the preceding Federal Census, or having a tax valuation of Fifteen Million Dollars (\$15,000,000), or over, according to the last approved tax rolls, there shall be biennially appointed an Auditor of Accounts and Finances, the title of said officer to be County Auditor, who shall hold his office for two (2) years, and who shall receive as compensation for his services One Hundred and Twenty-five Dollars (\$125) for each million dollars, or major portion thereof on the assessed valuation, the annual salary to be computed from the last approved tax rolls; said annual salary from county funds shall not exceed Three Thousand, Six Hundred Dollars (\$3,600). * * *."

Article 1646, Vernon's Annotated Texas Civil Statutes, reads as follows:

"When the Commissioners' Court of a county, not mentioned and enumerated in the preceding Article shall determine that an auditor is a public necessity in the dispatch of the county business, and shall enter an order upon the Minutes of said Court fully setting out the reasons and necessity of an auditor, and shall cause said order to be certified to the District Judges having jurisdiction in the county, said Judges shall, if such reason be considered good and sufficient, appoint a County Auditor, as provided in the succeeding Article, who shall qualify and perform all the duties required of County Auditors by the Laws of this State; provided said Judge shall have the power to discontinue the office of such County Auditor at any time after the expiration of one

year when it is clearly shown that such Auditor is not a public necessity and his services are not commensurate with his salary received; * * *."

Article 1646a, Vernon's Annotated Texas Civil Statutes, reads as follows:

"The commissioners' court of any county under twenty-five thousand population according to the last United States census may make an arrangement or agreement with one or more other counties whereby all counties, parties to the arrangement or agreement, may jointly employ and compensate a special auditor or auditors for the purposes specified in Articles 1645 and 1646. The county commissioners' court of every county affected by this article may have an audit made of all the books of the county, or any of them, at any time they may desire whether such arrangements can be made with other counties or not; provided the district judge or grand jury may order said audit if either so desires."

This department held, in an opinion written by Hon. Bruce W. Bryant, First Assistant Attorney General, dated October 5, 1931, and recorded in Vol. 326, pp. 830-1-2-3-4, Letter Opinions of the Attorney General of Texas, that Article 1646a, Revised Civil Statutes of Texas, was a misnomer caused by an error in the codification of the Revised Civil Statutes of 1925 and that said Article should have been denominated as Article 1641a of the Revised Civil Statutes of Texas. This opinion held that county commissioners' courts of counties under 25,000 population, could, either alone or in conjunction with other counties having a population of less than 25,000 population, make an arrangement whereby they could jointly employ and compensate a special auditor or auditors for the purpose specified in Article 1641, Revised Civil Statutes. The opinion also held that such an auditor was a special auditor and was an entirely different type of auditor from that of a county auditor whose office was authorized under Articles 1645 and 1646, Revised Civil Statutes and whose duties were prescribed in the articles following. This opinion also held that there was no statute which authorized two or more counties to jointly employ a county auditor. We think the above opinion is correct and we hereby approve same. We enclose herewith a copy of said opinion which contains a comprehensive discussion of the matters involved therein.

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A county auditor is clearly a county officer. He takes an official oath and makes an official bond.

A special auditor, as provided for in Article 1641, supra, clearly is not a county officer.

Article 16, Section 40 of our State Constitution, would clearly prohibit a person from holding office as county auditor in two counties at the same time, just the same as it would prohibit a person from holding office as County Judge in two counties at the same time.

However, Article 16, Section 40 of our State Constitution, would not apply to special auditors who are not county officers.

It is therefore the opinion of this department that a person may not legally hold office or serve as county auditor for more than one county at the same time.

It is the further opinion of this department that county commissioners' courts of counties under 25,000 population, could, either alone or in conjunction with other counties having a population of less than 25,000 population, make an arrangement whereby they could jointly employ and compensate a special auditor or auditors for the purpose specified in Article 1641, Vernon's Annotated Texas Civil Statutes. However, such a special auditor would not be a county auditor nor would he be a county officer.

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED SEP 9, 1940
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

By /s/ Wm J. Fanning
Wm J. Fanning
Assistant

WmJF:ob:jl
Encl.

APPROVED
OPINION
COMMITTEE
By BWB /s/
Chairman: