



**THE ATTORNEY GENERAL
OF TEXAS
AUSTIN, TEXAS**

BRUCE DANIEL
ATTORNEY GENERAL
XXXXXXXXXXXXXX

*Superseded with
at 29 RUC*

**Honorable Thomas A. Wheat
County Attorney
Liberty County
Liberty, Texas**

Dear Sir:

**Opinion No. O-2748
Re: Salaries of county officials
of Liberty County**

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

"Prior to this last preceding census of 1940, Liberty County had a population of less than 20,000 inhabitants, and the County was operating under the Officers' Salary Law and under Section 15 of Article 3912c. Now according to the last census, the population of Liberty County is approximately 25,000 inhabitants, and as such, we would come under Section 13, which applies to Counties between 20,000 inhabitants or more and less than 190,000 inhabitants, according to the last preceding Federal Census. This Statute, among other things provides, as follows:

"....provided that in Counties having a population of 20,000 and less than 37,500 according to the last preceding Federal census, and having an assessed valuation in excess of \$15,000,000.00, according to the last approved preceding tax roll of such County, the maximum amount allowed such officers as salaries may be increased 15 per cent for each one million dollars valuation or fractional part thereof, in excess of said Fifteen Million (\$15,000,000.00) Dollars

valuation over, and above the maximum amount allowed such officers under laws existing on August 24, 1935;....'

'This provision fits Liberty County exactly. Now, then, we have to look to Article 3891 to see what the maximum amount allowed such officers as salaries may be increased 1% for each one million dollars valuation or fractional part thereof in excess of said fifteen million dollars valuation over and above the maximum amount allowed such officers of the laws existing on August 24th, 1935.

'Now, then we have to look to Article 3891 to see what the maximum amount allowed such officers under laws existing on August 24th, 1935 were. Here, we find, that Article 3891, among other things, provides:

'In counties containing as many as twenty-five thousand and one (25,001) and not more than thirty-seven thousand, five hundred (37,500) inhabitants, district and county officers named herein shall retain one-third of such excess fees until such one-third, together with the amount specified in Article 3883, amounts to Thirty-five Hundred Dollars (\$3500). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Eighteen Hundred Dollars (\$1800.00).'

'The question now arises as to whether or not, we would be entitled to come under this sub-division of Article 3891 in figuring what our maximum income would be, under the laws of 1935. Inasmuch as Section 13 provides for a ceiling of 37,500 and a minimum of 20,000, and the third paragraph of 3891 being the part that I quoted to you above provides for a ceiling of 37,500 and then a minimum of 25,001. Inasmuch as we come within the bracket of at least the ceiling of 37,500, it seems that in estimating the

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amount of the maximum amount that would be allowed to the County officials of Liberty County under the laws existing on August 24, 1935, that you would follow the third paragraph of Article 3891, the part that I have quoted to you above.

"I would like to have an opinion from you as to whether or not, in your opinion, the Commissioners' Court would be guided by Article 3891, providing for our salaries and the salaries of other County officials of Liberty County. The main reason why we think that this provision should govern it is if you follow paragraph #2 and if it is found that Liberty County comes under paragraph #2 of Article 3891, then and in that event the officers of Liberty County will take a cut in their salaries from what they were making while operating under Section 15 for counties having a population of less than 20,000 inhabitants. At the present time we have more people to serve than we had, while operating under the Federal Census of 1930, and Section 15 of Article 3912a, and we have more duties to perform, because we have more people to serve. As such out of plain common reasoning it seems as though our salaries should certainly be increased instead of lowered.

"For your exact information the population of Liberty County according to the 1940 Census is somewhere in the neighborhood of 25,000, maybe a few figures below 25,000 inhabitants. Please let us have an early reply from you in this connection."

The population of Liberty County, Texas, according to the 1930 Federal Census was 19,868 inhabitants.

The population of Liberty County, Texas, according to the 1940 Federal Census, as announced by John L. Lewis, U.S. Census Supervisor of the San Antonio area in the Dallas Morning News of August 11, 1940, was 24,555 inhabitants.

Article 3912e, Section 13, Vernon's Annotated Texas Civil Statutes, reads in part as follows:

"The Commissioners' Court in counties having a population of twenty thousand (20,000) inhabitants or more, and less than one hundred and ninety thousand (190,000) inhabitants according to the last preceding Federal Census, is hereby authorized and it shall be its duty to fix the salaries of all the following named officers, to-wit: sheriff, assessor and collector of taxes, county judge, county attorney, including criminal district attorneys and county attorneys who perform the duties of district attorneys, district clerk, county clerk, treasurer, hide and animal inspector. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by him in his official capacity for the fiscal year 1935, and not more than the maximum amount allowed such officer under laws existing on August 24, 1935; provided that in counties having a population of twenty thousand (20,000) and less than thirty-seven thousand five hundred (37,500) according to the last preceding Federal Census and having an assessed valuation in excess of Fifteen Million (\$15,000,000.00) Dollars, according to the last approved preceding tax roll of such county the maximum amount allowed such officers as salaries may be increased one (1%) per cent for each One Million (\$1,000,000.00) Dollars valuation or fractional part thereof, in excess of said Fifteen Million (\$15,000,000.00) Dollars valuation over and above the maximum amount allowed such officers under laws existing on August 24, 1935;...."

Article 3891, Vernon's Annotated Texas Civil Statutes, 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 388, amounts to Three Thousand Dollars (\$3,000). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 388, amounts to Fourteen Hundred Dollars (\$1400)...."

We quote from the recent case of Macogdoches County vs. Winder, (Beaumont Court of Civil Appeals) 140 SW 2d 972, as follows:

"The following facts are without dispute; Appellee, Winder, was the duly elected, qualified and acting County Clerk of Macogdoches County during the years 1937 and 1938. Macogdoches County was under the salary act law, Article 3912e, section 13, Vernon's Ann. Civil Statutes, and Article 3891, R.C.S., Vernon's Ann. Civ. St. art. 3891. Under these statutes, the salary of the County Clerk of Macogdoches County was governed by the minimum of salary earned in 1935, and a maximum salary of \$3,500. The County Clerk of Macogdoches County in 1935 earned as compensation of his office the sum of \$3,286.16. On January 13, 1936, at a regular session of the Commissioners' court, an order was entered by said court fixing appellee's salary at \$3,286.16 the amount earned as salary by the county judge of said county in 1935. Later in said month, January 31st, at a called session of said court, his salary was fixed at \$3,350 per year. On January 11, 1937, the commissioners' court in regular session fixed his salary at \$3,000, for that year, and on January 10, 1938, said court fixed his salary at \$3,000 for said year. This was \$286.16 less than the minimum salary for 1935, and \$350 less

than the salary as fixed by the order of January 31, 1936. Appellee prayed judgment for \$572.32, the difference between the \$3,000 per year for 1937 and 1938, and the minimum of \$3,286.16 as fixed by the order of January 13, 1936, or in the alternative, for judgment for \$700 if the order of January 31, 1936, passed at the called session be found proper. The judgment was for \$572.32.

"We think the order fixing appellee's salary made at the regular term on January 13, 1936, was in accordance with the law, and that the amount then fixed as the annual salary of a appellee, \$3,286.16, under the facts and the law was proper, and is controlling here. Article 1912e, section 11, Vernon's Ann. Civ. St. fixed the salary of County Clerks in the class of counties in which Maccondoches fall, at not less than the total sum earned by him in his official capacity for the fiscal year 1935 and not more than the maximum amount allowed such officer under laws existing on August 24, 1935. The legislature having prescribed the minimum amount of salary (the official earnings in 1935) and that being shown to have been \$3,286.16, the commissioners' court did not have the authority to ignore this statutory provision of minimum salary and fix the salary at \$3,000. The provisions of the statute authorizing the commissioners' court to fix the salary at any sum not less than a certain minimum, and not more than a certain maximum, are mandatory, and could not be ignored by the members of the court at their discretion. The order fixing appellee's salary at \$3,000 was without authority, and so void."

Opinion No. O-2582 of this department dealt with a situation relative to the salaries of the officers of Travis County, Texas, where the population of that county had increased from 77,777 inhabitants in 1930 to 110,686 inhabitants according to the 1940 census. This opinion holds that the change in the population of Travis County, as shown by the Federal Census of 1940, has no effect whatever upon the salaries of the district and county officers named in

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Article 3912e, Section 13, V.A.C.S. and that the maximum salary to be allowed such officer was the maximum allowed the officer by laws existing August 24, 1935, to-wit, \$4,750.00. We enclose herewith a copy of said opinion.

Opinion No. O-2560 of this department holds that the commissioners' court of Limestone County, Texas, should fix the salaries of the officials of said county named in Article 3912e, Sec. 13, V.A.C.S., for the year 1941; that the minimum salary of each such officer cannot be less than the total sum earned as compensation by him in his official capacity for the fiscal year 1935 and that the maximum salary of each above mentioned officer could be the maximum amount allowed him under laws existing August 24, 1935, plus one per cent for each one million dollars valuation or fractional part thereof in excess of fifteen million dollars. This opinion dealt with a situation where there was a decrease in population. We enclose herewith a copy of said opinion.

We also enclose herewith copies of opinions Nos. O-2565, O-2546 and O-2563 of this department which deal with similar questions.

On August 24, 1935, the population of Liberty County, Texas, according to the then last preceding Federal Census of 1930, was 19,868 inhabitants, and at that time, to-wit, August 24, 1935, the maximum amount allowed the county and district officers of Liberty County, Texas, under Articles 3883 and 3891, Vernon's Annotated Texas Civil Statutes, was the sum of \$3,000.00.

You are respectfully advised that it is the opinion of this department the maximum salaries of the county officials of Liberty County, Texas, named in Article 3912e, Section 13, V.A.C.S., for the year 1941, cannot exceed the sum of \$3,000.00 plus one per cent thereof for each million dollar valuation or fractional part thereof in excess of fifteen million dollars. For example, if the assessed valuation of Liberty

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County, Texas, according to the last approved preceding tax roll of such county, was \$22,285,140.00 (as we have been informed by the State Comptroller that it was) the maximum salary of such county officials could not exceed the sum of \$3,240.00 for the year 1941.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

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

WJP:AW/lc

ENCLOSURE

APPROVED Sep. 27, 1940

/s/ Gerald C. Mann

ATTORNEY GENERAL OF TEXAS