



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable J.C. Gowdy  
County Auditor  
Wichita County  
Wichita Falls, Texas

Dear Sir:

Opinion No. 0-2887  
Re: Officers' Salary Law - Fees of  
Clerk for making unofficial election  
reports in general election.

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

"In view of Section 3 of Article 3912e of Vernon's Annotated Civil Statutes, is the County Clerk entitled to the compensation set out in Section 3 of Article 3022a of Vernon's Annotated Civil Statutes?"

Article 3022a, Vernon's Annotated Texas Civil Statutes, reads in part as follows:

"Sec. 2. The county clerk in case of general election, or the county chairman if a primary election, shall tabulate such unofficial returns when received, and at convenient intervals until midnight of election day shall announce or have announced at the courthouse door, or some other designated place, the total number of votes, as far as tabulated at the time, counted for each candidate, and/or for or against each proposition submitted to the voters for determination. When returns from each precinct of the county shall have been tabulated the county clerk or county chairman shall immediately prepare an unofficial memorandum of the total number of votes received by each candidate, and/or cast for or against each proposition submitted to the people, and shall post a copy of the same at the courthouse door or at some other designated public place in the county. And such officer shall, after making the un-

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official memorandum, immediately transmit by telegraph or by more expeditious means to the Secretary of State, an unofficial but complete report of the number of votes cast in his county for each candidate for state and district offices, and/or cast for or against each proposition submitted to the voters of the entire State. The Secretary of State shall tabulate the unofficial returns received at his or her office and shall prepare an unofficial memorandum concerning the status of the returns received, at least once each day until he shall have received complete, unofficial returns from each county, at which time he shall prepare a memorandum giving the total number of votes received by each candidate, and/or cast for or against each proposition submitted to the people, as shown by the unofficial returns received at his office.

"Sec. 3. For receiving unofficial returns by telephone and tabulating them as herein provided, the county clerk or county chairman and assistants employed in the work shall receive the same compensation per hour as allowed precinct judges of election.

"Sec. 4. Charges for telephone or other service in transmitting unofficial returns to the county clerk shall be payable out of the general fund of the county. Charges for such service in primary elections shall be payable out of the funds of the political parties holding such elections.

"Sec. 5. The tabulation of unofficial returns shall be preserved for public inspection until such time as official returns shall have been tabulated; thereafter, the unofficial tabulation may be destroyed."

Article 2943, Vernon's Annotated Texas Civil Statutes, reads as follows:

"Judges and Clerks of general and special elections shall be paid Three Dollars (\$3) a day each, and Thirty (30) Cents per hour each for any

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time in excess of a day's work as herein defined; provided that in all counties having a population in excess of three hundred and fifty-five thousand (355,000) inhabitants, according to the last preceding or any future Federal Census, such Judges and Clerks shall be paid Five Dollars (\$5) a day each, and Fifty (50) Cents per hour each for any time in excess of a day's work as herein defined. The Judge who delivers the returns of election immediately after the votes have been counted shall be paid Two Dollars (\$2) for that service, provided the polling place of his precinct is at least two (2) miles from the courthouse, and provided also he shall make returns of all election supplies not used when he makes return of the election. Ten (10) working hours shall be considered a day within the meaning of this Article. The compensation of Judges and Clerks of general and special elections shall be paid by the County Treasurer of the county where such services are rendered upon order of the Commissioners Court of such county. (Underscoring ours)

Sections 3 and 5 of Article 3912e, Vernon's Annotated Texas Civil Statutes, read as follows:

"Sec. 3. In all cases where the Commissioners' Court shall have determined that county officers or precinct officers in such county shall be compensated for their services by the payment of an annual salary, neither the State of Texas nor any county shall be charged with or pay to any of the officers so compensated, any fee or commission for the performance of any or all of the duties of their offices but such officers shall receive said salary in lieu of all other fees, commissions or compensation which they would otherwise be authorized to retain; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds hereinafter provided for all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such monies received by him into the fund created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the

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the payment of costs in civil cases by the State but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act to account for fees, commissions and costs collected from private parties.

"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."

We quote from Opinion No. 0-807 of this department as follows:

"You are respectfully advised that it is the opinion of this department that all county and precinct officers who are compensated on a salary basis are required to collect all costs in civil cases by the state and all fees, commissions and costs from private parties who are required by law to pay such fees, commissions and costs.

"The costs in civil cases by the state and all fees, commissions and costs collected from

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private parties who are required by law to pay such fees, commissions and costs when collected by county or precinct officers compensated on a salary basis must be deposited in the Officers' Salary Fund of the county.

"The tax assessor-collector shall collect all fees required by law to be collected by the tax assessor-collector and he shall deposit such fees in the Officers' Salary Fund of his county.

"No county or precinct officer who is compensated on a salary basis shall collect from the state or county any fees, commission or costs for any or all of the duties performed by him except the costs of civil cases by the State."

We enclose herewith a copy of Opinion No. 0-807.

In view of the foregoing authorities, you are respectfully advised that it is the opinion of this department that your question should be answered in the negative insofar as it applies to counties operating under the Officers' Salary System, and it is so answered.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Wm. J. Fanning*

Wm. J. Fanning  
Assistant

WJF:AW

APPROVED DEC 5, 1940

*George B. ...*

ATTORNEY GENERAL OF TEXAS

*Burt*  
CHAIRMAN