OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Tom Seay
County Attorney
Potter County
Amarillo, Texas

Dear Sir:

Opinion No. O-3041
Re: The authority of the commissioners' court of Potter County to authorize appointment of a clerk by the district attorney.

Your recent request for an opinion of this department upon the question as is herein stated has been received.

We quote from your letter as follows:

"The Commissioners' Court of Potter County has requested that we obtain the opinion of your office as to their power to authorize the appointment of a clerk for the District Attorney for the 47th Judicial District, composed of Potter, Armstrong and Randall Counties. The District Attorney has briefed this question, and his brief is appended hereto and made a part hereof.

"We hesitate to express an opinion at variance with that of the District Attorney, but, in view of the fact that your office has on many occasions held unconstitutional as special legislation laws of the type cited as authority by the District Attorney, we think it best to call this to your attention. Also, we do not believe that Article 3902 is applicable to districts embracing more than one county; this is borne out by the emergency clause in the caption to H.B. No. 59."

House Bill No. 59, referred to in your letter, reads as follows:

"Section 1. In any Judicial District composed of three counties, where the population of said

counties totals not less than fifty-six thousand and one (56,001) nor more than fifty-seven thousand and fifty-three (57,053), according to the last Federal Census, the District Attorney shall receive from the State of Texas as pay for his services the sum of Five Hundred ($500.00) Dollars per annum, as provided for in the Constitution, and, in addition thereto, shall receive the sum of Thirty-five Hundred ($3,500.00) Dollars, where all commissions and fees of said office amount to as much; said salary to be paid, however, in the same manner as now provided for the Five Hundred ($500.00) Dollar payment as fixed by the Constitution. All commissions and fees allowed District Attorneys by law, except in escheat cases, shall when collected be paid to the District Attorney of the Counties in which such fees and commissions were earned, who shall pay the same over to the State Treasurer.

"Sec. 2. Any such District Attorney is hereby authorized to appoint an Assistant District Attorney, who shall receive from and after March 1, 1931, as a salary the sum of Three Thousand ($3,000.00) Dollars per annum, payable by the State of Texas monthly, and such Assistant shall be removable at the will of the District Attorney.

"Sec. 3. Any such District Attorney shall also be authorized to employ two additional Assistant District Attorneys with the consent of the County Judge of any county composing said district having the largest population of the three counties; one of whom shall receive a salary of not to exceed Three Thousand ($3,000.00) Dollars per annum, and one of whom shall receive a salary of not to exceed Two Thousand Five Hundred ($2,500.00) Dollars per annum, the same to be payable monthly, and said District Attorney is further authorized to emply a stenographer, with the consent of such County Judge, who shall be paid in the same manner not to exceed One Thousand Eight Hundred ($1,800.00) Dollars per annum, and he may also employ two Investigators to be paid in the same manner, one not to exceed Two Thousand Four Hundred ($2,400.00) Dollars per annum, and the other not exceeding Two Thousand ($2,000.00) Dollars per annum; said last two named Assistants, Investigators and Stenographer shall be paid by said counties in proportion to

the respective populations of each by warrants drawn upon the general funds thereof. (underscoring ours)

"Sec. 4. Said Assistant District Attorneys shall have all of the powers now authorized by law for Assistant District Attorneys, and all of said employees may be removed at will by the District Attorney.

"Sec. 5. Said counties shall each be authorized to pay not to exceed Six Hundred ($600.00) Dollars per annum to the District Attorney for expenses incurred by him in the preparation and conducting of criminal affairs of said Office, but which shall constitute no part of his salary; said funds to be expended on the sworn claim of the District Attorney, to be approved by the County Judge of the respective counties.

"Sec. 6. Should any section, or part thereof, be held unconstitutional, it is hereby declared that it is the legislative intent that the remaining part of this Act will have been passed without such invalid section or part thereof.

"Sec. 7. The fact that there is no law providing adequate salaries for District Attorneys in and for the above defined districts, and there is no law providing for the deputies, assistants and stenographers for such districts, creates an emergency and an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended and that this Act shall take effect and be in force from and after its passage, and said Rule is hereby suspended, and it is so enacted."

House Bill No. 59, supra, became effective April 15, 1931, and Articles 3886f, Vernon's Annotated Civil Statutes, became effective November 13, 1935, and reads as follows:

"Section 1. From and after January 1, 1936, in all Judicial Districts in this State the District Attorney in each such District shall receive from the State as pay for his services the sum of Four Thousand

Dollars ($4,000) per year, which said Four Thousand Dollars ($4,000) shall include the Five Hundred Dollars ($500) salary per year now allowed such District Attorneys by the Constitution of this State; providing that in all Judicial Districts in this State composed of two (2) or more counties in one (1) of which such counties there is a city containing the population of not less than ninety thousand (90,000) inhabitants according to the last preceding Federal Census, the District Attorney of such District shall receive from the State as pay for his services the sum of Five Thousand Five Hundred Dollars ($5,500) per year, which said Five Thousand Five Hundred Dollars ($5,500) shall include the Five Hundred Dollars ($500) salary per year now allowed such District Attorneys by the Constitution of this State. Such salary shall be paid in twelve (12) equal monthly installments upon warrants drawn by the Comptroller of Public Accounts upon the State Treasury. Provided that nothing in this Act shall be construed so as to deprive District Attorneys of the expense allowance allowed or which may hereafter be allowed by law.

"Sec. 2. All monies heretofore appropriated by the Legislature to pay fees, salaries and per diem accounts of the officers named in this Act are hereby reappropriated for the purpose of paying the salaries fixed by this Act.

"Sec. 3. All fees, commissions and perquisites which may be earned and collected by District Attorneys affected by this Act shall be paid into the County Treasury of the counties in which such fees are earned for the account of the proper fund.

"Sec. 4. Nothing in this Act shall be construed to repeal or in any manner affect any law now in existence with reference to Assistant District Attorneys, Investigators or Stenographers in Judicial Districts included in this Act.

"Sec. 5. Nothing in this Act shall affect Criminal District Attorneys whose district is composed of only one (1) county."

It is to be noted that the last enactment by the Legislature does not expressly repeal House Bill No. 59, supra. However, the two statutes under consideration, herein, are in pari materia and their provisions in such respect cannot be reconciled. In such circumstances, the older statute will be held to be repealed by implication to the extent of the conflict. It is presumed that the Legislature intended to repeal all laws and parts of laws clearly inconsistent with its later acts. (39 Tex. Jur., page 145)

However, it is to be noted that Section 4 of Article 3886f, specifically provides that nothing in this act "shall be construed to repeal or in any manner affect any laws now in existence with reference to Assistant District Attorneys, Investigators, Stenographers in judicial districts included in this act." House Bill No. 59, supra, was a law in force and effect providing for the appointment of assistant district attorneys, investigators and stenographers, when Article 3886f, was enacted by the Legislature and as expressed in Section 4 of Article 3886f, it was intended that nothing therein could be construed to repeal or in any manner affect any law in existence at the time of the passage of Article 3886f, with reference to the appointment of assistant district attorneys, investigators or stenographers. Therefore, House Bill No. 59 would authorize the district attorneys, in those districts coming within said act to appoint assistant district attorneys, investigators and stenographers as provided therein, notwithstanding the passage of Article 3886f.

We have carefully considered House Bill No. 59, supra, and it is our opinion that said House Bill No. 59 is unconstitutional, for the reasons stated in our Opinions Nos. O-2011, O-735, O-2127, and O-2224, copies of which are enclosed for your information.

Our Opinion No. O-2026 holds that "the commissioners' court has the legal authority and power to allow the district attorney of Johnson County to employ a clerk in compliance with Article 3902, Vernon's Annotated Civil Statutes." Johnson

County is in a judicial district composed of three counties. We enclose a copy of this opinion for your information.

Trusting that the foregoing fully answers your inquiry, we are

APPROVED MAR 12, 1941

Gerald C. Mann

FIRST ASSISTANT
ATTORNEY GENERAL

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Ardell Williams

Ardell Williams
Assistant

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ENCLOSURE

APPROVED
OPINION
COMMITTEE
BY
CHAIRMAN