



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Weldon B. Davis
County Attorney
Austin County
Bellville, Texas

Dear Sir:

0-3081

Opinion No. 0-5081
Re: Can the commissioners' court of Austin County, under the stated facts, enter an order reducing or decreasing the ex-officio compensation to be paid to the County Attorney for future services at a meeting other than the first regular meeting in January?

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

We quote from your letter as follows:

"In order that I may correctly advise the Commissioners' Court of Austin County I would like to have your opinion in regard to the following question:

Austin County is now and was in 1939 a County with a population of less than 20,000 inhabitants according to the last preceding Federal Census, and the Commissioners' Court of Austin County has by its orders duly made and entered of record at its first regular meeting in January of each calendar year since the effective date of Article 3912c of the Revised Civil Statutes of Texas determined that the county officers of Austin County shall be compensated on the basis of fees earned by them in the

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performance of their official duties. On April 22, 1939, a vacancy occurred in the office of County Attorney of Austin County. On said date, April 22, 1939, and during the time the vacancy existed and before the appointment to fill the vacancy was made, the Commissioners' Court by an order duly made and entered of record reduced the ex-officio compensation to be paid the County Attorney of Austin County from and after said date from \$1800.00 per year, or \$150.00 per month, to \$1200.00 per year, or \$100.00 per month. The ex-officio compensation of \$1800.00 per year had been fixed at the first regular meeting of the Commissioners' Court in January, 1939. On April 25, 1939, three days after such order reducing the ex-officio compensation was made and entered of record, the Commissioners' Court made the appointment of a County Attorney to fill the vacancy, and the person so appointed accepted such appointment and qualified as such officer with full knowledge of the action of the Commissioners' Court in reducing the ex-officio compensation to be paid such officer, and in fact such appointee before accepting such appointment and before qualifying for such office expressed to the Commissioners' Court his satisfaction and his willingness to serve as County Attorney at such reduced ex-officio compensation. He has now, however, presented to the Commissioners' Court his claim for additional ex-officio compensation for the period from the date of his qualification to the end of the year 1939 at the rate of \$50.00 per month, that being the amount the ex-officio compensation was reduced by the order of the Court made and entered on April 22, 1939. The exact question thus presented is whether the Commissioners' Court of Austin County under the facts related could at a meeting other than the first regular meeting in January of each year enter an order reducing or decreasing the ex-officio compensation to be paid the County Attorney for future services.

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"In briefing the question I have come to the conclusion that the provisions of Article 3912e of the Revised Civil Statutes relating to the times and the amounts and the manner of fixing the salaries of county officers, and the recent cases together with the opinions handed down by your office construing the provisions of this article, have no application to the question presented for the reason that Austin County is compensating its officers on a fee basis and not on a salary basis. Any authority the Commissioners' Court has to allow, change or modify compensation for ex-officio services must be derived from Article 3895 of the Revised Civil Statutes of Texas and the construction given said article by the courts of our State. In my opinion the case of Collingsworth County vs. Myers, 35 S. W. 414, definitely settles the issue and correctly answers the question in the affirmative. My conclusion that the Court could on April 22, 1939, and as for that matter at any time, lawfully enter the order changing or reducing the ex-officio compensation of the County Attorney for future services is further fortified by the statements found under the title 'Public Officers' in 34 Texas Jurisprudence, Sec. 107, on page 511, and in the same volume and under the same title on pages 526-529, Sec. 115, and the authorities there cited."

We have carefully considered your letter, together with the statutes and authorities mentioned therein, and agree with the conclusion reached by you.

Article 3895, Vernon's Annotated Civil Statutes, reads as follows:

"The Commissioners' Court is hereby 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 for in this chapter. In cases where the compensation and excess fees which the officers are allowed to retain shall not reach the maximum provided for in this chapter, the Commissioners' Court shall allow compensation for ex officio services when, in their

judgment, such compensation is necessary, provided, such compensation for ex officio services allowed shall not increase the compensation of the official beyond the maximum of compensation and excess fees allowed to be retained by him under this chapter. Provided, however, the ex officio herein authorized shall be allowed only after an opportunity for a public hearing and only upon the affirmative vote of at least three members of the Commissioners' Court."

We quote from Texas Jurisprudence, Vol. 34, P. 527, as follows:

"* * * the commissioners' court has power to fix the compensation of an officer, it may change the amount at any time, even during his term of office. Thus its orders fixing the compensation of officers for ex-officio services are not contracts or judgments against the county, and may be changed, modified, repealed or revoked at any time before the money has actually been paid out to the officer. * * *."

We quote from the case of Collingsworth County v. Myers, 35 S. W. 414, as follows:

"* * *. We are of opinion that, in auditing and fixing the amounts to be paid such officers for ex officio services, the commissioners' court acts in a legislative capacity more than in a judicial, and that such orders are not judgments against the county, and that, whenever the commissioners conclude, for any reason, that such allowances are too great or too small, they have the right and power, at any time before the money is actually paid out to the officer, to change, modify, or even entirely repeal or revoke, the order. * * *."

In view of the foregoing authorities, the above stated question is answered in the affirmative.

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Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED FEB 3, 1941

[Handwritten signature]
FIRST ASSISTANT
ATTORNEY GENERAL

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By

Ardell Williams
Assistant

AZ:RS

