



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable John R. Shook
Criminal District Attorney
San Antonio, Texas

Attention: Honorable W. Pat Camp

Dear Sir:

Opinion No. 0-3210
Re: Method of payment of the
salary of the Criminal
District Attorney of Bexar
County.

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

We quote from your letter as follows:

"We desire to obtain your opinion on the question of the payment of the salary of the Criminal District Attorney of Bexar County.

"Under the present system such district attorney is paid on a per diem basis which results in considerable variance each month in the amount he receives, although his total maximum salary is \$7400.00 per annum.

"I note in your opinion #0-2531, issued during the month of November, 1940, your holding that since January 1, 1936, all district attorneys have been compensated by the payment of an annual salary in twelve equal monthly installments, rather than by the allowance of fees.

"Article 3883C of our Statutes formerly applied to Bexar County, but we are now under the bracket as outlined in Article 3912E ---- 1, at page 599 of Vernon's Centennial Edition, 1939, Cumulative Supplement, which, of course, pre-

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vides for an annual salary not to exceed \$7400.00 per annum. I am unable to find any specific statute directing the payment to the District Attorney other than indicated in the above quoted Article. I do find, however, very specific instructions with reference to the payment of the district attorney in counties of 355,000 or over, as provided by Article 3912D, Sec. 1.

"Under the present system as set up by our auditor, the criminal district attorney and five other officers of this county receiving the same salary, to-wit: \$7400.00, are paid on the basis of days worked; that is, for the month of January they were paid an amount equaling 31/365 and for the month of February 28/365 of their annual salary. It strikes me, however, that if, for instance, the Criminal District Attorney of Bexar County should resign his office on the night of the 28th of February, 1941, he would be entitled to one-twelfth of his annual salary of \$7400.00 for the month of February.

"The auditor of our county has been concerned with the possibility that upon a resignation or death of one of such officers in the middle of a month, that it would be possible that the officer resigning and the one coming into office would together, perhaps, receive more than the maximum allowed by law, unless such salaries are figured on the per diem basis. The auditor suggest that Article 6821 dealing with the method of computing the salaries of special judges is controlling in the matter of the payment of the salary of the district attorney and other officials."

Article 3912c-1, Vernon's Annotated Civil Statutes reads as follows:

"The provisions of this Section shall apply to and control in each county in the State of Texas having a population of three hundred thousand (300,000) inhabitants or more and less than three hundred and fifty-five thousand (355,000) inhabitants according to the last preceding Federal Census.

"(a) The County Judge, Sheriff, District Attorney, District Clerk, County Clerk and the Assessor and Collector of Taxes of such Counties shall each receive a salary of Seventy-four Hundred Dollars (\$7400) per annum. The County Auditor of such Counties shall receive a salary of Sixty-five Hundred Dollars (\$6500) per annum, in lieu of any and all compensation now provided by law; provided that any salary or compensation now provided by law to be paid such County Auditors out of any special funds, including compensation for services rendered navigation, levee, drainage or road districts, shall be charged and collected, but shall be paid into the General Fund of such counties. The County Treasurer of such counties shall receive a salary of Thirty-nine Hundred Dollars (\$3900) per annum. The Judges of the County Courts at Law and the County Criminal Courts of such counties shall each receive a salary of Six Thousand Dollars (\$6,000) per annum. All of such salaries enumerated in this subsection shall be paid out of the General Fund of such counties.

"(b) The County Commissioners of such counties shall each receive a salary of Fifty-five Hundred Dollars (\$5500) per annum and such salaries shall be out of the Road and Bridge funds of such counties.

"(c) All Justices of the Peace and Constables of such counties who are compensated on a fee basis as provided by law shall be en-

titled to retain annual fees and/or salary of Forty-five Hundred Dollars (\$4500) each, provided however, that all fees and commissions whether current or delinquent which are collected by the incumbent during his tenure of office shall be applied first to the payment of his deputies, authorized expenses of his office and to make up the maximum compensation provided for in this subsection. No such officers shall be entitled to receive for any purpose any fees or commissions that are collected after he ceases to hold such office."

Bexar County has a population of 338,176 inhabitants according to the 1940 Federal Census. Therefore, said county comes within the designated population bracket as set forth in said statute, making the same applicable to Bexar County.

It will be noted that the above mentioned statute providing salaries for the various officers named therein does not specifically designate or name the criminal district attorney, but uses the term "district attorney" instead of criminal district attorney. We believe that the term "district attorney" is broad enough to include the criminal district attorney in a county such as Bexar, which, as above stated, comes within the statute and has a legally elected qualified and acting criminal district attorney instead of a district attorney.

Article 3912e-1, supra, specifically provides that the various officials named in paragraph (a) thereof shall each receive a salary of Seventy-four Hundred (\$7400) per annum. The statute does not require that said salary shall be paid in 12 equal monthly installments. We think that the statute authorizes the payment of the salary of the criminal district attorney (and other officers named in said statute) on a per diem basis. In other words, where the criminal district attorney did not serve as such for a full year his salary would be the annual salary of the criminal district attorney as provided in said statute, divided by 365 and the quotient multiplied by the number of days

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actually served by him, as Article 3912e-1 provides for an annual salary and does not require said salary to be paid in 12 equal monthly installments.

We do not think that Article 6821, Vernon's Annotated Civil Statutes, and our opinion 0-2531 referred to in your letter has any application whatsoever to the question under consideration. Where it is stated in opinion 0-2531 that "Since January 1, 1936, the district attorneys in all judicial districts in this State have been compensated by the payment of an annual salary in 12 equal monthly installments, rather than by allowance of fees." Article 3888f, Vernon's Revised Civil Statutes, refers and applies only to district attorneys whose salaries are paid by the State. We enclose a copy of said opinion for your information.

Trusting that we have fully answered your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*
Ardell Williams
Assistant

AW:ej
Encl.

APPROVED MAR 21, 1941

Gerald B. Mann
ATTORNEY GENERAL OF TEXAS



9/18/41