



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN
~~JONES~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable H. D. Stringer
County Attorney
Hall County
Memphis, Texas

Dear Sir:

Opinion No. 0-3599

Re: If the County Attorney is directed to bring suit for the county against an individual for damages done to property belonging to the county, is he only allowed the commission thereon prescribed by Article 335, Vernon's Annotated Civil Statutes, and related questions?

Your letter of August 14, 1941, requesting an opinion of this department upon the questions stated herein has been received.

We quote from your letter as follows:

"If the County Attorney is directed to bring suit for the county against an individual for damages done to property belonging to the county is he only allowed the commission thereon prescribed by Art. 335, R. S.? And if the suit was settled before judgment would he still be entitled to the remuneration provided in Art. 335, R. S.? Also would the remuneration in such a suit be a fee of office and accountable for as such?"

Article 335, Vernon's Annotated Civil Statutes, reads as follows:

"Whenever a district or county attorney has collected money for the State or for any county, he shall within thirty days after receiving the same, pay it into the treasury of the State or of the county in which it belongs, after deducting therefrom and retaining the commissions

allowed him thereon by law. Such district or county attorney shall be entitled to ten per cent commissions on the first thousand dollars collected by him in any one case for the State or county from any individual or company, and five per cent on all sums over one thousand dollars, to be retained out of the money when collected, and he shall also be entitled to retain the same commissions on all collections made for the State or for any county. This article shall also apply to money realized for the State under the escheat law."

Paragraph 3 of Article 6716, Vernon's Annotated Civil Statutes, provides:

"3. The owners, operators, drivers or movers of any vehicle, object or contrivance over a public highway or bridge shall be jointly and severally responsible for all damages which said highway or bridge may sustain as the result of negligent driving, operating or moving of such vehicle, or as a result of operating same at a time forbidden by said road officials. The amount of such damages may be recovered in any action at law by the county judge for the use of the county, and such recovery shall go to the benefit of the damaged road. The county attorney shall represent the county in such suit."

You do not state in your letter whether or not the case in which you may be directed to represent the county is a case as mentioned in Article 6716, supra. However, in the absence of such statement, for the purposes of this opinion, we assume that the case is not to be brought under this statute.

Article 334, Vernon's Annotated Civil Statutes, provides that district and county attorneys shall advise and give opinions to the various county and precinct officers, but this does not mean that the Commissioners' Court is required to employ the County Attorney in all civil suits, nor does it mean that the County Attorney has the right to represent the county in all such suits.

In the case of *Loosoon v. Harris County*, 38 Tex. 511, the Supreme Court held that the Commissioners' Court of the county has the exclusive right to determine whether a suit should be brought in the name and for the benefit of the county, except in the case where a concurrent or exclusive right is conferred on

some other official or tribunal by the Legislature to exercise in some specified case a like discretion.

In the case of Brady v. Brooks, 89 S. W. 1052, the Supreme Court stated that:

"The principal purpose of the Constitution in creating the offices of district attorney and county attorney was to make it the main functions of these officers, the prosecution of criminal cases."

However, the Legislature has from time to time conferred additional duties upon these officers. As further evidence that the duties and rights of the County Attorney prescribed by the Constitution were not restricted, we refer to the subsequent acts of the Legislature conferring additional duties upon these officers, such as, Article 6716, supra, and Article 339, Vernon's Annotated Civil Statutes, which require the District or County Attorney to institute such proceedings as are necessary to compel the performance of certain duties by certain officers and to preserve and protect the public interest as set forth in said statute.

The Commissioners' Court has the authority to employ counsel to the exclusion of the County Attorney to institute suits in behalf of the county, except actions against office holders, as provided by Article 339, supra. This was held heretofore by this department in conference opinion No. 2673. This opinion held that the Commissioners' Court has the authority to employ counsel to the exclusion of the County Attorney to bring suit against the Banking Commission for the recovery of county funds under the guaranty bank fund law on account of the banks (county depository) failure, and the County Attorney is not entitled to any commission on collections made as a result of said suit, except as may be provided by contract between the County Attorney and the Commissioners' Court.

The case of City National Bank v. Presidio County, 26 S. W. 777, holds that it is not the legal duty of the County Attorney to represent the county in suits affecting its interest. The case of Jones v. Veltman, 171 S. W. 291, holds that the Commissioners' Court has the authority to employ the County Attorney to represent the county in pending suits.

After a careful search of the statutes, we fail to find any statute imposing the duty upon the County Attorney to

represent the county in any suit to recover damages done to property belonging to the county except as above stated. This being true, there is no duty imposed upon the County Attorney to bring the above mentioned suit. However, under the above mentioned authorities, the Commissioners' Court has the legal authority to contract with the County Attorney to bring the suit for the county and to pay him a reasonable compensation for his services in such suit as may be determined by the Commissioners' Court and the County Attorney. We do not think that Article 335, supra, has any application to the question under consideration, but that said statute applies only in those instances where the duty or duties are imposed upon the County Attorney by law to perform such duties and in such cases, Article 335, supra, provides compensation for such services.

Therefore, it is the opinion of this department that Article 335, supra, has no application to the question under consideration, and that the Commissioners' Court can legally contract with the County Attorney to bring the above mentioned suit and pay the said County Attorney a reasonable compensation for such services as may be agreed upon between the Commissioners' Court and the County Attorney. Our opinion No. 0-45 supports the conclusion stated herein, and we enclose a copy of the same for your information.

Trusting that the foregoing fully answers your inquiry,
we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Ardell Williams
Ardell Williams
Assistant

AW:GO

ENCLOSURE

APPROVED AUG 21, 1941

/s/ Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED
Opinion
Committee

By /s/ CEC
Chairman