



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN
~~XXXXXXXXXXXXXXXXXXXX~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable B. T. Walters
County Auditor
Smith County
Tyler, Texas

Dear Sir:

Opinion No. 0-3670

Re: Commissioners' Court of
Smith County has authority
to allow county attorney
reasonable necessary travel-
ing expenses in attending
justice courts of the county.

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

"Please advise the method of computing the amount of traveling expenses that may be legally paid the County Attorney of Smith County for attending the Justice of the Peace Courts in the different precincts of Smith County."

Smith County has a population in excess of 20,000 inhabitants, and its county officers are compensated upon a salary basis.

Section (b) of Article 3899, Vernon's Annotated Civil Statutes, reads as follows:

"(b) Each officer named in this Act, where he receives a salary as compensation for his services, shall be empowered and permitted to purchase and have charged to his county all reasonable expenses necessary in the proper and legal conduct of his office, premiums on officials' bonds, premium on fire,

burglary, theft, robbery insurance protecting public funds and including the cost of surety bonds for his Deputies, such expenses to be passed on, pre-determined and allowed in kind and amounts, as nearly as possible, by the Commissioners' Court once each month for the ensuing month, upon the application by each officer, stating the kind, probable amount of expenditure and the necessity for the expenses of his office for such ensuing month, which application shall, before presentation to said court, first be endorsed by the County Auditor, if any, otherwise the County Treasurer, only as to whether funds are available for payment of such expenses. The Commissioners' Court of the county of the Sheriff's residence may, upon the written and sworn application of the Sheriff stating the necessity therefor purchase equipment for a bureau of criminal identification, such as cameras, finger print cards, inks, chemicals, microscopes, radio and laboratory equipment, filing cards, filing cabinets, tear gas and other equipment in keeping with the system in use by the Department of Public Safety of this State, or the United States Department of Justice and/or Bureau of Criminal Identification.

"Such purchases shall be made by each officer, when allowed, only by requisition in manner provided by the County Auditor, if any, otherwise by the Commissioners' Court. Each officer shall, at the close of each month of his tenure of office, make an itemized and sworn report of all approved expenses incurred by him and charged to his county, accompanying such report with invoices covering such purchases and requisitions issued by him in support of such report. If such expenses be incurred in connection with any particular case, such report shall name such case. Such report, invoices and requisitions shall be subject to the audit of the County Auditor, if any, otherwise by the Commissioners' Court, and if it appears that any item was not incurred by such officer, or that such item was not a necessary or legal expense of such office, or purchased upon proper requisition, such item shall be by said County Auditor or court rejected, in which case the payment of such item may be adjudicated in any court of competent jurisdiction. All such approved claims and accounts shall be paid from the Officers' Salary Fund unless otherwise provided herein.

"The Commissioners' Court of the county of the Sheriff's residence may, upon the written and sworn application of such officer, stating the necessity therefor, allow one or more automobiles to be used by the Sheriff in the discharge of official business, which, if purchased by the county shall be bought in the manner prescribed by law for the purchase of supplies and paid for out of the General Fund of the county and they shall be reported and paid in the same manner as herein provided for other expenses.

"Where the automobile or automobiles are owned by the Sheriff or his Deputies, they shall be allowed four (4¢) cents for each mile traveled in the discharge of official business, which sum shall cover all expenses of the maintenance, depreciation and operation of such automobile. Such mileage shall be reported and paid in the same manner prescribed for other allowable expenses under the provisions of this section. No automobile shall be allowed for any Deputy Sheriff except those regularly employed in outside work. It shall be the duty of the County Auditor, if any, otherwise the Commissioners' Court, to check the speedometer reading of each of said automobiles, owned by the county once each month and to keep a public record thereof; no automobile owned by the county shall be used for any private purpose."

We have considered the cases of State vs. Carnes, 106 S. W. (2d) 397, and Casey vs. State, 289 S. W. 428, which construe Section (a) of Article 3899, Vernon's Annotated Civil Statutes, and hold that the rule of construction 'ejusdem generis' qualifies the general language (other necessary expenses) by the antecedent specially enumerated items of expense (stationery, stamps, telephone, premiums on officials' bonds, including the cost of surety bonds for his deputies, premiums on fire, burglary, theft, robbery insurance protecting public funds, traveling expenses) and restricts and limits the meaning of the general language (other necessary expenses) to expenses of the same kind and class of the above specially enumerated items of expense. We have also considered the case of Crosthwait vs. State, 138 S. W. (2d) 1060, which construes Section 19 (1) of Article 3912e, Vernon's Annotated Civil Statutes, and holds that the rule of construction 'ejusdem generis' is applicable to said section. (Said section is in all material respects hereto virtually the same as Section (a) of Article 3899.)

The rule of Construction 'ejusdem generis' has been defined by 19 Corpus Juris, page 1255, as follows:

"Liberally 'Of the same kind of species.'
A well-known maxim of construction, to aid in ascertaining the meaning of a statute or other written instrument, the doctrine being that, where an enumeration of specific things is followed by some more general word or phrase, such general word or phrase is to be held to refer to things of the same kind."

It is our opinion that the rule of construction 'ejusdem generis' is not applicable to Section (b) of Article 3899, Vernon's Annotated Civil Statutes, because the general words "all reasonable expenses necessary in the proper and legal conduct of his office" do not follow the specific words "premiums on officials' bonds, etc." but on the contrary antecede said specific words. Clearly the rule of construction 'ejusdem generis' would not apply to Section (b) of Article 3899, Vernon's Annotated Civil Statutes.

It is frequently necessary in the proper conduct of his office that the county attorney travel from the county seat to the various outlying justice courts of his county.

It is our opinion that the commissioners' court of Smith County would have authority to allow the county attorney reasonable necessary traveling expenses for attending justice courts of the county. The method of computation of such expenses allowed, if any, would be for the commissioners' court to determine in their sound discretion.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ Wm. J. Fanning
Wm. J. Fanning
Assistant

APPROVED JUL 3, 1941
/s/ Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL
WJF:N:mjs