



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Overruled by V-20  
*Where conflicts*

Honorable Coke Stevenson  
Governor of Texas  
Austin, Texas

Dear Sir:

Opinion No. 0-4420

Re: (1) Authority of an incorporated city in Texas to authorize, by ordinance, the arming with firearms of special police officers serving without pay;  
(2) Limitations upon the authority of sheriffs, chiefs of police and mayors to appoint special officers.

You have requested the opinion of this department upon the above questions. These questions, and the facts from which they arise, are stated in your letter as follows:

"The organization plan suggested by the United States Office of Civilian Defense for local organizations in cities and towns calls for the appointment of auxiliary policemen to support the regular police force in case of enemy action or the threat thereof.

"Many cities of Texas have appointed such auxiliary policemen. In all cases known to me these auxiliary policemen serve without compensation.

"I have been asked whether a city can, by ordinance, commission these non-salaried policemen as special officers and authorize them to be armed with guns and pistols during the period of their training, as well as during an actual emergency.

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"In the development of our defense organization in the State the question has also arisen as to the specific definition or limitations on the authority to be exercised by sheriffs, chiefs of police and mayors with respect to the appointment of special officers.

" I shall appreciate an opinion from you, therefore, on these two points, to-wit:

"1. Does an incorporated city in Texas have the authority to authorize, by ordinance, the arming of special officers with guns or pistols?

"2. What limitations are there upon the authority which may be exercised by sheriffs, chiefs of police and mayors with respect to the appointment of special officers?"

The pertinent parts of article 483, Penal Code of Texas, are:

"Whoever shall carry on or about his person . . . any pistol . . . shall be punished by fine not less than one hundred dollars nor more than five hundred dollars or by confinement in jail for not less than one month nor more than one year."

Article 484, Penal Code of Texas makes certain exceptions to article 483, supra, and the pertinent parts are:

"The preceding article shall not apply to a person in actual service as a militiaman, nor to any peace officer in the actual discharge of his official duties, nor to the carrying of arms on one's own premises or place of business, nor to persons traveling, nor to any deputy constable, or special policeman who receives a compensation of forty dollars or more per month for his services as such officer, and who is appointed in conformity with the statutes authorizing such appointment . . . ." (underscoring ours)

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We believe it to have been the Legislative intention to prohibit deputy constables and special policemen from carrying arms unless they were receiving forty dollars per month or more.

Under the facts before us, it is our opinion that an incorporated city has no power by ordinance to authorize the appointment of special officers and permit them to be armed even for the laudable purpose contemplated. Such would be in violation of article 483, supra.

In our Opinion No. 0-12, we held that, under the provisions of Article 3902, Vernon's Revised Civil Statutes, the sheriff of Galveston County might appoint as many deputies as he might be authorized to appoint by the commissioners' court of said county, acting within its discretion as to the necessity therefor. And in our opinion No. 0-1896, we held that, with the approval of the commissioners' court, additional sheriffs deputies might be appointed to serve without pay. We enclose herewith copies of said opinions.

In the event a commissioners' court authorizes the sheriff to appoint additional deputies to serve without pay, the order authorizing such appointments should state that the deputies to be appointed are to be allowed no salary, else they might be able to recover for their services on a quantum meruit basis. Harris County v. Neville (Civ. App.) 84 S. W. (2nd) 834.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By *Lloyd Armstrong*  
Lloyd Armstrong  
Assistant

APPROVED APR 27, 1943  
*John S. Allen*

FIRST ASSISTANT  
ATTORNEY GENERAL  
LA:ncd

