



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable J. M. Preston
County Attorney
Childress County
Childress, Texas

Attention: Honorable C. C. Broughton

Dear Sir:

Opinion No. 0-5304

Re: Authority of Commissioners' Court in fee county to pay salary of deputy sheriff out of the general fund of the county.

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

"The Sheriff's Office of Childress County is on a fee basis, and the Sheriff is paid an ex-officio salary of \$1000.00 per year.

"On April 12th, 1943, the Commissioners' Court of Childress County, by its order, authorized the appointment of a Deputy Sheriff at a Salary of \$150.00 per month, to be paid out of the General Fund.

"A copy of the order setting the Sheriff's ex-officio salary, and a copy of the order authorizing the appointment of a deputy and his salary to be paid out of the General Fund, are inclosed herewith.

"I have checked the statutes covering the appointment of deputies, and the fees of the Sheriff's office, and I can not find any statute authorizing the Commissioners' Court to pay a deputy sheriff out of the General Fund.

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"It is my opinion that such order is void. I would appreciate an opinion from you on the validity of the inclosed order.

". . . ."

The population of Childress County, Texas, according to the 1940 Federal census is 12,147 inhabitants, and as stated in your letter its officers are compensated on the fee basis.

Article 6869, Vernon's Annotated Texas Civil Statutes, reads in part as follows:

". . . . Provided further, that if in the opinion of the Commissioners' Court fees of the sheriff's office are not sufficient to justify the payment of salaries of such deputies, the Commissioners' Court shall have the power to pay same out of the General Fund of said county."

Section 1 of Article 3902, Vernon's Annotated Texas Civil Statutes, which sets the maximum salaries of deputies, assistants and clerks in counties of the class of Childress County, reads as follows:

"1. In counties having a population of twenty-five thousand (25,000) or less inhabitants, first assistant or chief deputy not to exceed Eighteen Hundred (\$1800.00) Dollars per annum; other assistants, deputies or clerks not to exceed Fifteen Hundred (\$1500.00) Dollars per annum each."

In your letter you do not state whether the deputy sheriff appointed was a chief deputy or an ordinary deputy.

If the deputy appointed was chief deputy sheriff it is our opinion that the order of the court allowing him a salary of \$150.00 per month (12 months or yearly salary at such monthly rate would be \$1800.00) payable out of the general fund was valid provided that as found in the order that fees of the sheriff's office were insufficient to pay same.

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If the deputy appointed was not a chief deputy his salary could not have been legally set at more than \$125.00 per month (12 months or yearly salary would be \$1500.00).

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /signed/

Wm. J. Fanning
Assistant

WJF:mp
WJF/JCP

APPROVED MAY 21, 1943
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION COMMITTEE
By B. W. B., Chairman