



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Lee Prensell
County Attorney
Upshur County
Gilmer, Texas

Dear Sir:

Opinion No. 0-5588

Re: If the Sheriff of Upshur County is drafted into the Service of the Armed Forces of the United States or volunteers for service under the Selective Service Act, can he continue to draw his salary as such officer should he desire not to resign his office?

You have requested the opinion of this department on the question stated above.

You state that if the sheriff is inducted into the Army, he will enter as a private, and that his deputies will perform the duties of his office.

It is our opinion that, under such circumstances, the Sheriff of Upshur County being compensated on a salary basis, his induction into the Army of the United States will not prevent him from continuing to draw his salary as sheriff. This conclusion follows the principles set out in our Opinion No. 0-3853.

If the sheriff becomes an officer in the United States Army (the "Regular Army"), as distinguished from the National Guard and the various reserve corps, then, under Article 16, Section 12 of the Constitution of Texas, he will lose his right to hold the office of sheriff. See our Opinion Nos. 0-4343 and 0-4591.

Hon. Lee Fressnell, page 2

Since your letter indicates that you have copies of the opinions referred to above, we do not enclose them. However, if copies of them are desired, we will be glad to furnish them.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

(s)

W. R. Allen
Assistant

WRA:db
WRA:fo
(s) FCC

APPROVED OCT. 18, 1943
(s) Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE
BY (S) BSB, CHAIRMAN