



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Evans J. Adkins
County Attorney, McCulloch County
Brady, Texas

Dear Sir:

Opinion No. 0-5764
Re: Whether the Commissioners' Court of McCulloch County has the authority to increase the salary of the County Treasurer above \$2,000 annually?

Your letter of December 14, 1943, requesting the opinion of this department on the question stated therein reads, in part, as follows:

"Article 3943, states in part 'The Commissions allowed to any County Treasurer shall not exceed \$2000.00 annually.'

"Where the Commissioners Court is allowing commissions in this amount, have they any legal authority allow any more, as ex-officio or other salary, except in the population brackets mentioned.

"In other words the population of this county according to the latest U S Census is 13,208. The Commissioners Court of McCulloch fixes the compensation of the County Treasurer on Commissions, not to exceed \$2000 per annum. Has the Court any authority to increase this compensation?"

We are informed by the State Comptroller's Department that the county officials of McCulloch County were compensated on a fee basis for the year 1943. For the purposes of this opinion, we assume that said county officials will be compensated on a fee basis for the year 1944.

The Legislature prescribed the maximum percentage of commissions (Articles 3941, 3942, limited by Article 3943, Vernon's Annotated Civil Statutes) to which the county treasurer may be entitled, and imposed the duty on the commissioners' court of fixing the compensation within such limitation.

In the case of Baxter v. Musk County, 11 S. W. (2d) 649, it is said:

" * * * The settled rule of law is that when commissions are not fixed by order of the commissioners' court the county treasurer is entitled to receive the maximum fees in the statutes. Bastrop County v. Hearn, 70 Texas 364, 8 S. W. 308; Montgomery County v. Talley, (Tex. Civ. App.) 169 S. W. 1141. But, as firmly concluded in the case of Bastrop County v. Hearn, supra, the law prescribes no time when the court shall fix the compensation to the county treasurer for receiving and disbursing the public moneys; nor is there any inhibition to the changing of the rate of percentage after it has been once fixed. The limitation however, upon the authority to change an existing order fixing the percentage of compensation, is that it is not allowed to reduce the compensation earned for past services. Montgomery County v. Talley, (Tex. Civ. App.) 169 S. W. 1141."

We quote from the case of Williams v. Cass County, 147 S. W. (2d) 388, as follows:

" * * * It is settled law that the commissioners' court may not change the statutory plan of compensating the treasurer from a fee to a definite salary basis. But it is immaterial whether the court order denominated the compensation as a salary or a commission, the real character of the sums payable governs. The controlling element

in determining whether the amount to be received is upon a commission or a salary basis is whether that amount, by whatever name it may be called, is absolute and fixed, regardless of what the lawful commissions may be, or is made contingent upon earning that amount as commission." (See 11 Tex. Jur., 600 Section 70)

In view of the fact that the county officials of McCulloch County are compensated on a fee basis the officers' salary law (Article 3912a, Vernon's Annotated Civil Statutes) has no application to the question under consideration. Therefore, in view of the foregoing authorities and the above mentioned statutes, it is the opinion of this department that the compensation of the County Treasurer of McCulloch County cannot exceed \$2,000 per annum. Stated another way, the Commissioners' Court of McCulloch County has no authority to increase the compensation of the County Treasurer to exceed \$2,000 annually. The Commissioners' Court must fix the compensation of the County Treasurer within the limitation contained in Article 3943, Vernon's Annotated Civil Statutes.

Yours very truly

ATTORNEY GENERAL OF TEXAS

Evans J. Adkins
ATTORNEY GENERAL OF TEXAS

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