



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GROVER SELLERS

ATTORNEY GENERAL

Honorable Thomas L. Blanton, Jr.
County Attorney
Shackelford County
Albany, Texas

Dear Sir:

Opinion No. 0-6404

Re: Compensation of the deputies
of the Sheriff who is also the
Assessor-Collector of Taxes,
and other matters.

Your letter of January 24, 1945, requesting the opinion of this Department regarding the matters mentioned therein, is in part, as follows:

"The auditor who has audited our county books has brought up certain legal questions in connection with the administration of our county business upon which, as County Attorney, I would like to get opinions from your office.

"The population of Shackelford County is less than 25,000 inhabitants, and the total assessed valuations are approximately \$7,000,000.00. The office of Sheriff, Tax Assessor, and Tax Collector, is combined into one office, and held by one individual.

"For a number of years prior to the election of the present officer, and also prior to my becoming County Attorney, the fees of the deputies employed by the Sheriff, Tax Assessor and Tax Collector, were paid by the County Treasurer out of the General Fund, and all fees of office were paid into the County Treasury.

"The auditor, who has just audited the county books, objects to this procedure, and has advised the Commissioners' Court that the deputies of this office must be paid out of the fees of office and that their compensation is limited to the fees of office.

"In this connection, the officer who holds the combined

office of Sheriff, Tax Assessor, and Tax Collector, is Mr. Charles H. Arendt. He has employed under him as deputies the following: Mr. John Hightower, Chief Deputy Sheriff, at a salary of \$1800.00 per year; Mr. Emory Morris, Deputy Sheriff at Moran, Texas, at a salary of \$1800.00 a year; Mr. R. S. Plummer, Chief Deputy Tax Assessor, at a salary of \$1800.00 per year; Mrs. Nadine Brewster, Assistant Deputy Tax Collector, at a salary of \$1200.00 per year.

"All of these salaries have heretofore been paid by the County Treasurer out of the General Fund of Shackelford County, and during 1944 the fees of the respective offices did not quite meet the amounts necessary to pay the respective salaries, and that of the Sheriff himself. . . ."

We thank you for the brief submitted with your inquiry. Shackelford County has a population of 6,211 inhabitants according to the 1940 Federal Census and the County officials of said County are compensated on a fee basis for their official services.

In counties having a population of less than 10,000 inhabitants according to the last preceding census of the United States, the Sheriff of each of such counties in addition to his other duties shall be the Assessor and Collector of Taxes therefor. (Art. 8 Sec. 16 of the State Constitution; Art. 7246, V.A.C.S.)

Art. 3902, V.A.C.S., provides in part:

". . . the compensation which may be allowed the deputies, assistants or clerks above named for their services shall be a reasonable one, not to exceed the following amounts:

"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.

". . . ."

Art. 3899, V.A.C.S., provides in part:

". . . The amount of salaries paid to assistants and deputies shall also be clearly shown by such officer, giving the name, position, and amount paid each; and in no

event shall any officer show any greater amount than actually paid any such assistant or deputy. The amount of such expenses, together with the amount of salaries paid to assistants, deputies, and clerks shall be paid out of the fees earned by such officer"

We have carefully considered all the statutes mentioned in your inquiry in connection with the questions under consideration. For the purposes of this opinion we do not deem it necessary to quote said statutes in full.

Article 6869, V.A.C.S., authorizes the payment of Deputy Sheriffs out of the General Fund of the county only when the Commissioners' Court is of the opinion that the fees of the Sheriff are not sufficient to justify the payment of the deputies. The purpose of the statute is to enable the Sheriff to have a sufficient number of deputies to perform the duties of his office.

This Department has repeatedly held that a Sheriff who performs the duties of Tax Assessor-Collector, is holding only one office, that is, the office of Sheriff, and that the assessing and collecting of taxes are additional duties imposed upon the Sheriff. This Department has also repeatedly held that a Sheriff who performs the duties of the Assessor and Collector of Taxes is entitled to appoint only one Chief Deputy. You are therefore respectfully advised that it is the opinion of this Department that the Sheriff of Shackelford County, who performs the duties of Assessor-Collector of Taxes, is authorized to appoint only one Chief Deputy for his office, with the approval of the Commissioners' Court, and such other deputies and clerks that are necessary. The salary of the Chief Deputy cannot exceed the sum of \$1800.00 per annum, and the salaries of other deputies or clerks of the Sheriff cannot exceed \$1500.00 per annum each. The Sheriff of Shackelford County cannot legally appoint three Chief Deputies for his office and pay each a maximum compensation of \$1800.00 per annum. (See opinion No. 0-91, a copy of which is enclosed for your convenience.) All of the deputies appointed by the Sheriff are deputy sheriffs and none of them are deputy tax assessors or deputy tax collectors.

You are further advised that it is our opinion that the compensation of the deputies of the Sheriff must be paid from fees of his office, and there is no legal authority whatever authorizing the payment of such compensation out of the General Fund of the County except as authorized by Art. 6869 when the Commissioners' Court is of the opinion that the fees of the Sheriff are not sufficient to justify the payment of the deputies. This statute (Art. 6869) does not contemplate that the compensation paid the deputies out of the General Fund in accordance therewith shall be charged against the Sheriff. Stated differently the Sheriff is not authorized to pay the County Treasurer all the fees of his office, neither is the County Treasurer legally authorized to pay the compensation of the deputies of the Sheriff out of the General Fund of the County.

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As heretofore stated, the compensation of the deputies of the Sheriff must be paid out of the fees of his office, except as authorized by Art. 6869.

Yours very truly

ATTORNEY GENERAL OF TEXAS

/s/Ardell Williams

By

Ardell Williams
Assistant

AW:iw
Encl

APPROVED FEB 7 1945

/s/Grover Sellers

ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE

BY /s/BWB
Chairman