



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable B. F. McKee  
County Auditor  
Hidalgo County  
Edinburg, Texas

Dear Sir:

Opinion No. 0-6516  
Re: Liability of county for pay-  
ment of notary fees to deputy  
sheriff

We are in receipt of your letter of recent date requesting the opinion of this department on the above stated matter. We quote from your letter, as follows:

"There has arisen in this county a dispute over a bill presented to the County for Notary Public fees by a deputy sheriff of Hidalgo County.

"As County Auditor I have refused to approve or pay this bill.

"In order to present the questions necessary for determination, I will attempt as briefly as possible to state the facts surrounding this instance. The deputy in question has been a deputy sheriff of Hidalgo County since 1931 with his principal duties being those of an office deputy. He has been appointed a Notary Public and has taken the acknowledgments on all Sheriff's Deeds since that date. In 1938 Hidalgo County entered into an extensive delinquent tax collection program, and incident thereto filed a great number of delinquent tax suits, a number of which were reduced to judgment, foreclosed on and sold at Sheriff's Sale. In the preparation and delivery of the Sheriff's Deeds the deputy sheriff took

the acknowledgments, and so far as I have been able to learn never made a charge either to the sheriff or any other person for such services as a Notary Public. No charge was ever made to Hidalgo County. In December of 1944 the Sheriff's Sale on tax properties was unusually large. Shortly after the Sheriff's Deeds had been turned over to the County there was presented to me a bill for \$148.00 for Notary fees.

"I understand that under opinion O-5356 by a former Attorney General, Gerald C. Mann, the Attorney General has ruled that it was legal for a deputy sheriff on a straight salary basis to act as a Notary Public and devote part of his time to his duty as a Notary Public and charge fees for his service.

"Needless to say the deputy sheriff is being paid the full amount allowed by law for his services as a deputy sheriff.

"First, in view of the fact that the sheriff's charges are limited by law to \$2.00 in tax suits, is it permissible for a deputy sheriff to charge the county for his services as a Notary Public?

"Second, assuming that the deputy sheriff had the right to act as a Notary Public, is it legal for him to charge the County, his employer, for his services as a Notary Public?

"Third, where a charge of this character for services as a Notary Public had not been authorized by the County Commissioners' Court or the County Auditor prior to the rendering of the service, would such a charge be a proper and legal charge against the County, and could it be enforced?

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"Fourth, assuming that it would be legal for such charges to be made to the County for services as a Notary Public, is it possible for a deputy sheriff, an employee of the County, to institute a suit against the County which would enforce the collection of this account?

"I understand that there has been filed or will be filed within the next day or two a suit against the County to enforce the collection of this account, and for this reason I am submitting these questions to you in order that I may act in accordance with your advice when the County is presented with this suit."

Section (b) of Article 3899, Vernon's Annotated Civil Statutes, in part, provides:

"Each officer named in this Act, where he receives a salary as compensation for his services, shall be entitled and permitted to purchase or charge to his county all reasonable expenses necessary in the proper and legal conduct of his office, . . . and such expenses to be passed on, predetermined and allowed in the time and amount, as nearly as possible, by the Commissioners Court once each month for the ensuing month, upon the application by each officer, stating the kind, probable amount of expenditure and the necessity for the expenses of his office for such ensuing month, which application shall, before presentation to said court, first be endorsed by the county auditor, if any, otherwise the county treasurer, only as to whether funds are available for payment of such expenses. . . .

"Such purchases shall be made by each officer, when allowed, only by requisition in manner provided by the county auditor, if any, otherwise by the Commissioners Court. Each officer, shall, at the close of each month of his tenure of office, make an itemized and sworn report of all approved expenses incurred by him and charged to his county,

accompanying such report with invoices covering such purchases and requisitions issued by him in support of such report. If such expenses be incurred in connection with any particular case, such report shall name such case. Such report, invoices, and requisitions shall be subject to the audit of the county auditor, if any, otherwise by the Commissioners Court, and if it appears that any item was not incurred by such officer, or that such item was not a necessary or legal expense of such office, or purchased upon proper requisition, such item shall be by said county auditor or court rejected, in which case the payment of such item may be adjudicated in any court of competent jurisdiction. All such approved claims and accounts shall be paid from the Officers Salary Fund unless otherwise provided herein."

Article 6602, V. A. C. S., in part, provides:

"The acknowledgment or proof of an instrument of writing for record may be made within this State before:

- "1. A clerk of the district court.
- "2. A judge or clerk of the county court.
- "3. A notary public."

Section 1 of Article 3912a, V. A. C. S., in part, provides:

"No district officer shall be paid by the State of Texas any fees or commission for any service performed by him; nor shall the State or any county pay to any county officer in any county containing a population of twenty thousand (20,000) inhabitants or more according to the last preceding Federal Census any fee or commission for any service by him performed as such officer; . . . ."

Hidalgo County compensates its county officers on the basis of an annual salary, and the provisions of Section (b), Article 3699, supra, are applicable to said county. Under said provisions, each of the officers referred to is permitted to charge to his county all reasonable expenses necessary in the proper and legal conduct of his office, provided such expenses have been authorized in advance by the Commissioners' Court. In the absence of advance authorization by the Commissioners' Court for the sheriff to incur expenses against the county for notary fees, and in the absence of the Court's ratification of the sheriff's charging such expenses to the county, it is our opinion that the county would not be liable for such expenses. In connection with the matter as to whether such expenses for notary fees were necessary in the proper and legal conduct of the sheriff's office, we note that Article 6602, supra, authorizes the District Clerk, the County Clerk, or the County Judge to take acknowledgments. Either of said officers, by virtue of the authority of his office, could have taken the sheriff's acknowledgments to such deeds, and in a county where said officers are compensated on a salary basis, neither the county nor the State would be authorized to pay said officers any fees for such services (Sec. 1, Art. 3912a).

In view of the foregoing statutory provisions and in view of the facts submitted, it is our opinion that the county is not liable to the deputy sheriff for his services as a notary public in taking the sheriff's acknowledgments to deeds made by the State of Texas to purchasers of properties sold to satisfy delinquent tax judgments. This department held in Opinion No. 6-5396 that a deputy sheriff could qualify as a notary public and charge the fees provided by law for his services when acting in the capacity of a notary public. However, in this case, the deputy sheriff, who is also a notary public, is charged with knowledge of the legal limitations on the sheriff's authority to create a liability against the county. In view of the foregoing, we do not deem it necessary to answer your questions categorically.

We trust that we have satisfactorily answered your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

J. A. Ellis  
Assistant

APPROVED  
MAY 8 1945  
FIRE  
ATTORNEY GENERAL

JAE:ddt

APPROVED  
OPINION  
COMMITTEE  
BY R.W.  
CHAIRMAN