OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable H. W. Allen
District Attorney
52nd Judicial District
Hamilton, Texas

Dear Sir:

Opinion No. O-6592

Re: Consideration of Opinion No. O-6462 as same is affected by Senate Bill No. 123, and other questions on fees of office, ex-officio compensation, "budget law," etc.

We have received your recent request for our opinion on the following questions:

"1. Does the Commissioners' Court have the authority to alter the budget in a manner so as to increase the compensation allowed the Sheriff after submitting the same to the Controller after the first meeting in January?

"2. May Hamilton County change from the fee system to the salary system at a time after the first regular meeting in January, it being a County under 20,000 population under the 1940 Federal census, and may one County office be changed to the salary system without changing all county offices to the same?

"3. What is the maximum ex-officio compensation which may be allowed the Sheriff of Hamilton County under the provisions of S. B. 123, by Brown, and may the same be allowed at this time? i. e. Does the 25%

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provided for in said bill pertain to the $1,000 ex-officio of Sec. two of Art. 3934, or the maximum compensation of $3,000 allowed under Arts. 3883 and 3891, Vernon's Annotated Civil Statutes?"

Hamilton County is on a fee basis as that term is used in respect to the mode of compensating its officials.

In a recent opinion (No. O-6462) of this department addressed to the Honorable S. H. Allen, County Attorney of Hamilton County, it was held that the total compensation the Sheriff of said county was allowed to retain is Three Thousand Dollars ($3,000.00) per year. This maximum compensation was determined under the provisions of Article 3891, V. A. C. S., before the amendment of said article by Senate Bill No. 123 enacted by the 49th Legislature. Said Senate Bill No. 123 became effective as a law May 9, 1945, and is as follows:

"AN ACT amending Articles 3891, 3902 and Sections 13 and 15 of Article 3912e, Revised Civil Statutes of Texas, 1925, as amended, allowing additional compensation for certain district officers, county and precinct officers, and for deputies, clerks and assistants; repealing Section 2 of Article 3934, Revised Civil Statutes of Texas, 1925; repealing all laws in conflict; and declaring an emergency.

"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

"Section 1. That Article 3891, Revised Civil Statutes of Texas, 1925, as amended, be and the same is hereby amended by adding thereto the following:

"'(a) The Commissioners' Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the officers justify the increase, to enter an order increasing the compensation of the precinct, county and district officers in an additional amount not to exceed twenty-five (25%) per cent of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year of 1944 did not exceed the sum of Thirty-six Hundred ($3600.00) Dollars.'

"Sec. 2. That Article 3902, Revised Civil Statutes of Texas, 1925, as amended, be and the same is hereby amended by adding thereto the following:

"'9. The Commissioners' Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the deputies, assistants and clerks of any district, county or precinct officer justify the increase, to enter an order increasing the compensation of such deputy, assistant or clerk in an additional amount not to exceed twenty-five (25%) per cent of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year of 1944 did not exceed Thirty-six Hundred ($3600.00) Dollars.'

"Sec. 3. That Section 13 of Article 3912e, Revised Civil Statutes of Texas, 1925, as amended, be and the same is hereby amended by adding thereto the following:

"'(e) The Commissioners' Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the officers justify the increase, to enter an order increasing the compensation of the precinct, county and district officers in an additional amount not to exceed twenty-five (25%) per cent of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year of 1944 did not exceed the sum of Thirty-six Hundred ($3600.00) Dollars.'

"Sec. 4. That Section 15 of Article 3912e, Revised Civil Statutes of Texas, 1925, as amended, be and the same is hereby amended by adding thereto the following:

"'(b) The Commissioners' Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the officers justify the increase, to enter an order increasing

the compensation of the precinct, county and district officers in an additional amount not to exceed twenty-five (25%) per cent of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year of 1944 did not exceed the sum of Thirty-six Hundred ($3600.00) Dollars.'

"Sec. 5. That Section 2 of Article 3934, Revised Civil Statutes of Texas, 1925, be and the same is hereby in all things repealed; and all laws or parts of laws in conflict with the provisions of this Act are hereby repealed insofar as they conflict.

"Sec. 6. The fact that the cost of living is rising and the purchasing power of the dollars is decreasing, and that wages and salaries in private industry have increased to an extent that public officers and employees continue in their offices at a sacrifice in many instances; and the further fact of the crowded condition of the calendar, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and said Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted."

As the sum allowed under the law to the Sheriff of Hamilton County for the fiscal year of 1944 was only Three Thousand Dollars ($3,000.00), the next above amendment authorizes an increase in this maximum of 25%, i. e., a maximum of Three Thousand Seven Hundred and Fifty Dollars ($3,750.00).

Said Opinion No. O-6462 also held that the maximum amount of ex-officio compensation that said Sheriff could be allowed was One Thousand Dollars ($1,000.00) per year. This limitation was determined under the provisions of Section 2 of Article 3934, V. A. C. S., which since has been expressly repealed by said Senate Bill No. 123. The

general provisions of Article 3895, V. A. C. S., must now be looked to in allowing ex-officio compensation to such Sheriff. Said Art. 3895 appears as follows:

> "The Commissioners' Court is hereby debarred from allowing compensation for ex-officio services to county officials when the compensation and excess fees which they are allowed to retain shall reach the maximum provided for in this chapter. In cases where the compensation and excess fees which the officers are allowed to retain shall not reach the maximum provided for in this chapter, the Commissioners' Court shall allow compensation for ex officio services when, in their judgment, such compensation is necessary, provided, such compensation for ex officio services allowed shall not increase the compensation of the official beyond the maximum of compensation and excess fees allowed to be retained by him under this chapter. Provided, however, the ex officio herein authorized shall be allowed only after an opportunity for a public hearing and only upon the affirmative vote of at least three members of the Commissioners' Court."

In the case of Taylor v. Brewster County, 144 S. W. (2d) 314, (error dismissed, judgment correct) the Court of Civil Appeals held that, conditions existing as provided in Art. 3895, the Commissioners' Court might validly make this allowance for ex-officio compensation and made the observation that "the time when the Commissioners' Court may make this allowance is not specified in Art. 3895."

Our Opinion No. O-6576 holds, in effect, that the salaries of officials affected by Senate Bill No. 123 may be raised at this time, with the caution that the "budget law" must be complied with. Article 3895 was definitely affected when the limitation imposed by Article 3934 was removed by the enactment of Senate Bill No. 123.

Said Opinion No. O-6462 further holds that the provisions of Sec. 2, Art. 3912e, V. A. C. S., are mandatory in effect, and that there is no authority for a commissioners' court to determine whether county officers shall be paid on a fee or salary basis at any time other than at its first regular meeting in January of each year. This provision has not been affected by any subsequent Act of the Legislature.

Our Opinion No. 3045 of date April 24, 1939, holds that a commissioners' court is without authority to place one precinct officer upon a salary basis and leave other officers upon a fee basis, stating that "the system must be uniform and they must place all upon a salary basis or leave all upon a fee basis." This holding has been consistently adhered to by this department in regard to county officers also. That is, that the commissioners' court in counties of less than 20,000 inhabitants according to the last preceding Federal census must place all county officers upon a salary basis or leave all such county officers upon a fee basis. This holding in said opinion is not affected by the enactment of said Senate Bill No. 123.

Our Opinion No. O-5053-A holds that whether or not the commissioners' court has the authority to amend the county budget to take care of increase of salary for certain county officials is a fact question to be determined primarily by the commissioners' court. Opinion No. O-5184 holds similarly.

In view of the above, we answer your questions as follows:

Your question No. 1 is answered by our Opinion No. O-5053-A.

Your question No. 2, both parts, is answered in the negative.

Your question No. 3: The maximum ex-officio compensation which may be allowed said Sheriff is any sum which, when added to other compensation and excess fees allowed to be retained by him under said Articles 3883 and 3891, does not cause such officer to receive a total compensation in excess of Three Thousand Seven Hundred and Fifty Dollars ($3,750.00) per year. In no event could the fees of office and ex-officio compensation retained by him exceed the maximum of Three Thousand Seven Hundred and Fifty Dollars ($3,750.00). In other words, the maximum amount of compensation from any source which he is allowed to retain cannot exceed Three Thousand Seven Hundred and Fifty Dollars ($3,750.00) per year.

Such ex-officio compensation can be allowed at this time provided the "budget law" is complied with as pointed out in Opinion No. O-5053-A.

Honorable H. W. Allen, page 7

The 25% increase provided in Senate Bill No. 123 applies to the maximum compensation allowed under Articles 3883, and 3891, V. A. C. S. Section 2 of Article 3934 has been repealed by said Senate Bill No. 123.

We are herewith enclosing copies of said Opinions Nos. O-6462, O-6576, O-3045, O-5053-A, and O-5184.

We trust the foregoing fully answers your questions.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By Robert L. Lattimore Jr
Robert L. Lattimore, Jr.
Assistant

APPROVED MAY 24, 1945
Grover Sellers
ATTORNEY GENERAL OF TEXAS

RLL:LJ
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APPROVED
OPINION
COMMITTEE
BY Gwy 3
CHAIRMAN