



THE ATTORNEY GENERAL
OF TEXAS

GROVER SELLERS

~~JOHN BEN SHEPPERD~~
ATTORNEY GENERAL

AUSTIN 11, TEXAS

Hon. E. L. Hinson, Jr.
County Auditor
Polk County
Livingston, Texas

Opinion No. O-6655

Re: (1) Maximum salary of the deputies of the sheriff of Polk County.

(2) Authority of the county to pay for equipping a county garage for the repairs of its equipment out of the permanent improvement fund.

Dear Sir:

Your letter of June 8, 1945, requesting an opinion from this department is, in part, as follows:

"What is the maximum salary of the deputies of the sheriff of Polk County with the population of the county 20,250 and the valuation \$13,000,000 and the county is operating under the Officers Salary Law?

"Can the county pay for equipment, tools, and other items for equipping a county garage for the repairs of its equipment, road maintainers, out of the Permanent Improvement Fund?

". . . ."

Since Polk County has a population of less than 25,000 inhabitants the salary of the deputies of the sheriff of Polk County is governed by Section 1 of Article 3902. Section 1 of Article 3902 is as follows:

"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."

Senate Bill 123, Acts of the 49th Legislature, Regular Session, 1945, amends Article 3902 as follows:

". . . ."

"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.'

". . . ."

In answer to your first question it is the opinion of this department that the maximum salary allowed the chief deputy sheriff of Polk County is \$1,800.00 per annum plus the 25% increase allowed by Section 2 of Senate Bill 123, Acts of the 49th Legislature, Regular Session, 1945. The maximum salary allowed other deputies of the sheriff of Polk County is \$1,500.00 per annum plus the 25% increase allowed by Section 2 of Senate Bill 123, supra. In connection with the foregoing we wish to point out our Opinion No. 0-6576 wherein it states as follows:

". . . . Any increase of salary for the year 1945 must be in the proportion as the balance of the year relates to the total annual increase that may be made under said Act. In other words, if . . . the increase in compensation is allowed as of June 1st, then the increase for 1945 would be 7/12ths . . . The compensation for the months passed cannot be increased.

"In connection with the foregoing we direct your attention to Art. 689a-11, V.A.C.S., which is in part as follows:

"When the budget has been finally approved by the Commissioners' Court, the budget, as approved by the Court shall be filed with the Clerk of the County Court, and taxes levied only in accordance therewith, and no expenditure of the funds of the county shall thereafter be made except in strict compliance with the budget as adopted by the Court. Except that emergency expenditures, in case of grave public necessity, to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget, may from time to time be authorized by the Court as amendments

to the original budget. In all cases where such amendments to the original budget is made, a copy of the order of the Court amending the budget shall be filed with the Clerk of the County Court, and attached to the budget originally adopted.'"

We trust this answers your first question.

Section 9, Article 8 of the State Constitution prescribes the maximum rate of taxes for general purposes, for roads and bridges, for juries and for permanent improvements, respectively. These monies arising from taxes levied and collected for each of the enumerated purposes, are constitutional funds; and the Commissioners' Court has no power to transfer money from one fund to another and to expend for one purpose tax money raised ostensibly for another purpose. (See the following authorities: Carroll v. Williams, 202 S.W. 504; Commissioners' Court of Henderson County v. Burke, 262 S.W. 94; Rult v. Hill County, 116 S.W. 359; Underwood v. Howard, 1 S.W. (2d) 730; 11 Texas Jurisprudence 609.)

Equipment and tools used for the purpose of repairing county road equipment cannot be classified as a permanent improvement within the meaning of Section 9, Article 8, of the State Constitution.

Since the equipment and tools referred to in your second question are to be used for the purpose of repairing county road equipment, the county may pay for same out of the county road and bridge fund.

In view of the foregoing authorities we answer your second question in the negative.

Yours very truly
ATTORNEY GENERAL OF TEXAS

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

APPROVED JUN 19, 1945
/s/ Carlos C. Ashley
FIRST ASSISTANT
ATTORNEY GENERAL

By /s/ John Reeves
John Reeves

APPROVED: OPINION COMMITTEE
BY: BWB, CHAIRMAN

JR:mp:wb