



THE ATTORNEY GENERAL OF TEXAS

GROVER SULLIVANS
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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable Harvey C. Hooser
County Attorney
P. O. Box 722
Big Spring, Texas

Dear Sir:

Opinion No. O-7536

Re: Whether justices of the peace
and constables of counties having
more than 20,000 population may be
paid either by fees or salary and
the maximum salary for such officials.

This department has received your request dated December 6, 1946. Your letter states in part:

"Article No. 3912e in Section Nos. 1 and 2 are not exactly clear. I want to know if in Counties of more than 20,000 population can they either be paid by fees or by salary. I know it says that 20,000 or less it can be.

"Our county was approximately 20,980 at last census. I would like to know what the maximum salary for the Justice of the Peace and constable would be in a county of our size."

We quote from Article XVI, Section 61, of the Constitution of Texas:

"All district officers in the State of Texas and all county officers in counties having a population of 20,000 or more, according to the then last preceding Federal census, shall from the first day of January and thereafter, and subsequent to the first Regular or Special Session of the Legislature after the adoption of this Resolution, be compensated on a salary basis. In all counties in this State, the Commissioners' Court shall be authorized to determine whether precinct officers shall be compensated on a fee basis or on a salary basis; and in counties having a population of less than 20,000, according to the then last preceding Federal Census, the Commissioners' Court shall also have the authority to determine whether county officers shall be compensated on a fee basis or on a salary basis." (Underscoring ours)

Sections 1 and 2 of Article 3912e, V. A. C. S., follow the intention of the constitutional provision.

You will note that all counties may determine whether precinct officers shall be compensated on a fee or salary basis.

Section 17 of Article 3912e provides:

"(a). The term 'Precinct Officers' as used in this Act means justices of the peace and constables"

"(b). In counties where it shall have been determined that precinct officers shall be compensated on an annual salary basis it shall be the duty of the Commissioners' Court of such county to fix the salary allowed to such officers. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation earned by him in his official capacity for the fiscal year 1935 and not more than the maximum amount allowed such officer under laws existing August 24, 1935."

These laws are quoted for your guidance:

Article 3883, V. A. C. S.,:

"Except as otherwise provided in this Act, the annual fees that may be retained by precinct, county and district officers mentioned in this Article shall be as follows:

"1. In counties containing twenty five (25,000) thousand or less inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Texas, Twenty-four Hundred (\$2400.00) Dollars each; Justice of the Peace and Constable, Twelve Hundred (\$1200.00) Dollars each."

Article 3891, V. A. C. S.,:

"Each officer named in this Chapter shall first out of the current fees of his office pay or be paid the amount allowed him under the provisions of Article 3883, together with the salaries of his assistants and deputies, and authorized expenses under Article 3899, and the amount necessary to cover costs of premium on whatever surety bond may be required by law. If the current fees of such office collected in any year be more than the amount needed to pay the amounts above specified, same shall be deemed excess fees, and shall be disposed of in the manner hereinafter provided.

"In counties containing twenty-five thousand (25,000) or less inhabitants, District and County officers named herein shall retain one-third of such excess fees until such one-third, together with the amounts specified in Article 3883, amounts to Three Thousand Dollars (\$3,000). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Fourteen Hundred Dollars (\$1400.00)."

"* * * *

"(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."

We believe that the foregoing provisions of the Constitution and Statutes of the State of Texas set forth with sufficient clarity the answers to your request.

Very truly yours

ATTORNEY GENERAL OF TEXAS

s/ William B. Henley, Jr.

By

William B. Henley, Jr.
Assistant

WDH:djm:ldw

APPROVED DEC. 17, 1946

s/ Grover Sellers
ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE BY B. W. B. CHAIRMAN