



**OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

January 31, 1947

Honorable R. Canon Opinion No. V-11
County Auditor

Grayson County
Sherman, Texas

Re: Whether the County of Grayson can legally approve payment of claims allowed by order of the Commissioners' Court for clerical expenses incurred by a Tax Assessor-Collector in making his final monthly report of collections after his term of office has expired.

Dear Sir:

Your request for an opinion concerning the above subject matter has been duly received. Permit us to quote from your letter as follows:

"Can the County Auditor legally approve payment of claims allowed by order of the Commissioners' Court for clerical expense incurred by a Tax Assessor-Collector in making his final monthly report of collections after his term of office has expired?"

It is apparent from your question that the problem lies in the fact that the clerical expenses sought by the outgoing Tax Assessor-Collector are to be incurred after his term of office has expired.

Article 3902, Revised Statutes, as amended, provides for the appointment of deputies, assistants or clerks for county officers, including assessors and collectors of taxes. Section (b) of Article 3899, Revised Statutes, as amended, provides that each county officer who receives a salary as compensation for his services shall be entitled and permitted to charge to his county all reasonable expenses necessary in the proper and legal conduct of his office. These Articles are applicable to the county offices of Grayson County.

This right to such expenses attaches because it is incident to, and a necessary part of the emoluments and remunerations of such office. However, it is well settled that such a right begins when the officer takes his oath of office and ends when the term of office ends, whether by expiration of time, death, resignation, or abolition of the office by law. *Graves vs. Bullen* (Civil Appeals) 115 S. W. 1177. This does not mean that one is not entitled to receive expenses for services rendered during the holding of an office even though paid after the term of the office is over; but it is clearly manifest that the expenses are incident to the title to the office and not to the mere performance of official duties. 34 Texas Juris. 513. As a consequence, before the outgoing Tax Assessor-Collector could recover in a claim for such expenses, he would have to show that the expenses were incurred during the holding of the office, a fact which he could not prove.

In the case of *Tarrant County, et al, vs. Smith*, 81 S. W. (2d) 537, error refused, *Smith*, after he had gone out of office as Sheriff, sought to have the county allow him the amount he had paid a former deputy to make up his final report to the county. The court disposed of his claim as follows:

"There was no authority vested in the sheriff to retain a deputy to make up, after the sheriff's term of office had expired, a final report and to pay that deputy a salary out of fees of office which otherwise would belong to Tarrant County. Discussion of the point is unnecessary."

The facts in the *Smith* case and those we are here considering are substantially the same. The fact that an ex-sheriff was the claimant in that case and an ex-assessor and collector of taxes is the claimant in this case is immaterial. The same rule of law applies to the legality of both claims.

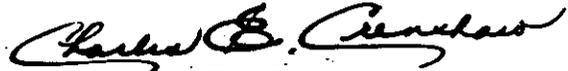
In view of the foregoing, your question is answered in the negative.

SUMMARY

The county auditor of Grayson County cannot legally approve payment of claims allowed by order of the Commissioners' Court for clerical expenses incurred by Tax Assessor-Collector in making his final monthly report of collections after his term of office has expired.

Very truly yours

ATTORNEY GENERAL OF TEXAS



By Charles E. Crenshaw
Assistant

CEC:rt

APPROVED:



ATTORNEY GENERAL

APPROVED OPINION COMMITTEE

By BWB, Chairman