THE ATTORNEY GENERAL OF TEXAS

PRICE DANIEL
ATTORNEY GENERAL

AUSTIN, TEXAS

February 17, 1947

Hon. Clifford O. Lawrence
County Attorney
Kinney County
Brackettville, Texas

Opinion No. V-44

Re: Authority of the County Judge of Kinney County to employ a secretary, and a related question.

Dear Sir:

Your letter of recent date requesting an opinion from this Department on the above subject matter is as follows:

> "This County has a population of less than Five Thousand (5,000) inhabitants, according to the last Federal Census, and their property valuation, according to the approved Tax Rolls for the preceding calendar year, is approximately Five Million ($5,000,000.00) Dollars.
>
> "In your opinion can the County Judge of this County employ a Secretary who could be paid out of the General Fund of this County?
>
> "In the event such a secretary may be employed at the expense of the County, can he legally dispose of the daily routine clerical matters arising in such office which has in the past required the signature of the Judge, orders of the court and the like excepted?
>
> "This letter is being written at the request of the County Judge and your assistance in the matter will be greatly appreciated."

Kinney County has a population of four thousand five hundred thirty-three (4,533) inhabitants according to the 1940 Federal Census, and its officials are compensated on a fee basis.

We held in Opinion No. O-2242:

"The county judge of Carson County is without statutory authority to employ a stenographer and pay her salary as an authorized expense of his office out of his fees of office.

". . . it is the opinion of this department that when the county judge of Carson County, Texas, complies with Article 3902, Vernon's Annotated Texas Civil Statutes, a clerk may be appointed for the county judge and when the county judge complies with Section (a) of Article 3899, Vernon's Annotated Texas Civil Statutes, he may pay said clerk out of his fees of office as an authorized expense of office. The county would not be authorized to expend any county funds whatsoever for the payment of the salary of the county judge's clerk in your county."

We quote the following from Opinion No. O-65:

". . . . From inquiry made to the Comptroller, we are advised that Shackelford County is a 'fee' county with a population of 6,695 and property valuation of $6,842,790.

"There is, in view of the statutes quoted above, no general law authorizing the employment of a stenographer for the county judge and payment of salary from the general fund. . . .

"You are, therefore, advised that there is no legal authority for payment of the county judge's stenographer from the general fund."

Article 3902, V.A.C.S., provides:

"Whenever any district, county or precinct officer shall require the services of deputies, assistants or clerks in the performance of his duties he shall

> apply to the County Commissioners' Court of his county for authority to appoint such deputies, assistants or clerks, stating by sworn application the number needed, the position to be filled and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions and compensation to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; and said court shall make its order authorizing the appointment of such deputies, assistants and clerks and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of said court may be proper; provided that in no case shall the Commissioners' Court or any member thereof attempt to influence the appointment of any person as deputy, assistant or clerk in any office. Upon the entry of such order the officers applying for such assistants, deputies or clerks shall be authorized to appoint them; provided that said compensation shall not exceed the maximum amount hereinafter set out. The compensation which may be allowed to the deputies, assistants or clerks above named for their services shall be a reasonable one, not to exceed the following amounts:. . ."

We quote the following from the case of Spencer vs. Galveston County, 56 Tex. 384, 393:

> "One who claims the right to exercise the powers of a public office and to receive the emoluments thereof, ought to be able to point to the law which authorizes him to do so, and in the absence of such a law such powers and rights cannot be implied."

See also Taylor vs. Goodrich, 40 S. W. 515 and 34 Tex. Jur. 440.

It is our opinion that a secretary would not constitute a deputy, assistant or clerk and, therefore, Article 3902 quoted above would not authorize the County Judge of Kinney County to employ a secretary. We are supported in this opinion by Article 3912e, Section 13, Subdivision (a) (applicable to counties of 20,000

inhabitants or more and less than 190,000 inhabitants.) which gives the Commissioners' Court in said county power to authorize the employment of a stenographer by the County Judge.

Since Kinney County has a population of 4,533 inhabitants according to the 1940 Federal Census, and its officials are compensated on a fee basis, it is our opinion that the County Judge of Kinney County is without authority to employ a secretary.

If the person to be employed by the County Judge is to perform the duties of a clerk, however, the County Judge may employ such clerk by complying with the provisions of Article 3902. The County Judge, however, would have to pay said clerk out of his fees of office as an authorized expense of office, and the county would not be authorized to expend any county funds whatsoever for the payment of the salary of the County Judge's clerk in your county.

The County Judge cannot delegate to another the power to sign any instrument to which the law requires the County Judge's signature to be affixed.

SUMMARY

1. The County Judge of Kinney County is not authorized to employ a secretary, but may employ a clerk by complying with the provisions of Article 3902.

2. The County Judge cannot delegate to another the power to sign any instrument to which the law requires the County Judge's signature to be affixed.

Yours very truly

APPROVED FEB. 17, 1947

Price Daniel

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By John Reeves
John Reeves
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JR:djm:jrb