



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

May 15, 1947

PRICE DANIEL
ATTORNEY GENERAL

Hon. Ray Lackey
County Auditor
Yoakum County
Plains, Texas

Opinion No. V-200

Re: Construction of Sec.
1a of Article 2350, V.
C.S.

Dear Sir:

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

"I would like an opinion from your office on Article 2350, Sec. 1a., as to who is entitled to receive the compensation and would the clerk of the court be included in this law."

House Bill No. 84, Ch. 204, Acts 49th Legislature, 1945, p. 280, provides as follows:

"Section 1. That Article 2350, Title 44 of the Revised Civil Statutes of the State of Texas, 1925, as amended by Acts of the Thirty-ninth Legislature, Regular Session, Chapter 135, Section 1; and as amended by Acts of the Fortieth Legislature, page 435, Chapter 290, Section 1; and as amended by the Acts of the Fortieth Legislature, First Called Session, page 138, Chapter 46, Section 1; and as amended by Acts of the Forty-third Legislature, Regular Session, Chapter 216; and as amended by Acts of the Forty-third Legislature, First Called Session, Chapter 83, page 220; and as amended by Acts, Forty-fourth Legislature, Regular Session, Chapter 362; be and the same is hereby amended so as to hereafter read as follows:

"Article 2350.

"In counties having the following assessed valuations, respectively, as shown

by the total assessed valuations of all properties certified by the county assessor and approved by the Commissioners Court, for county purposes, for the previous year, from time to time, the County Commissioners of such counties shall each receive annual salaries not to exceed the amounts herein specified, said salaries to be paid in equal monthly instalments, at least one-half ($\frac{1}{2}$), and not exceeding three-fourths ($\frac{3}{4}$), out of the Road and Bridge Fund, and the remainder out of the General Fund of the county; said assessed valuations and salaries applicable thereto being as follows: . . .

"In counties having an assessed valuation of less than Three Million, Five Hundred Thousand Dollars (\$3,500,000) each Commissioner shall receive Five Dollars (\$5) per day for each day served as Commissioner, and a like amount when acting as ex-officio road superintendent in his Commissioner's precinct, providing in no event shall his total compensation exceed Twelve Hundred Dollars (\$1200) in any one year. Provided further, however, that in counties having National Forest Preserves and with less than Four Million, Five Hundred Thousand Dollars (\$4,500,000) valuation that the salaries of said Commissioners shall not exceed Eighteen Hundred Dollars (\$1800) per year.'

"Section 1a. The Commissioners Court in each county is hereby authorized to pay the actual traveling expenses incurred while traveling outside of the county on official county business never to exceed Three Hundred Dollars (\$300) in any one year for each said official.'

"Sec. 2. The salary of each County Commissioner and each County Judge may be paid wholly out of the County General Fund or, at the option of the Commissioners Court, may be paid out of the County Gen-

eral Fund and out of the Road and Bridge Fund in the following proportions: County Judge not to exceed seventy-five per cent (75%) of such salaries may be paid out of the Road and Bridge Fund, and the remainder out of the General Fund of the County, and each County Commissioner's salary may, at the discretion of the Commissioners Court, all be paid out of the Road and Bridge Fund; provided this section shall not apply except in counties where the constitutional limit of twenty-five cents (25¢) on the one Hundred Dollar (\$100) valuation is levied for general purposes.

"Sec. 3. The Commissioners Court at its first regular meeting after the effective date of this Act and thereafter at the first regular meeting of each year shall, by order duly made and entered upon the minutes of same Court, fix the salaries of the County Commissioners for such year, within the limits as provided for in this Act.

"Sec. 4. That all general laws, or parts of general laws in conflict with the foregoing Act, be, and the same are hereby, expressly repealed.

"Sec. 5. If any section, clause, sentence, or other part of this Act shall for any reason be declared unconstitutional that shall not affect in any way the constitutionality of the remaining provisions hereof.

"Sec. 6. The fact that the present emergency has increased the cost of living and made it more difficult for counties to find men of competent ability to serve them has created an emergency and an imperative public necessity that the Constitutional Rule requiring that bills 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." (Underscoring ours)

We quote the following from our Opinion No. O-6816:

"Therefore, in answer to your seventh question, it is the opinion of this Department that each commissioner is entitled to Twenty-five (\$25.00) Dollars traveling expense in the county for each month, provided, of course, that such traveling expense is necessary and actually expended by such commissioner during said month while he is on official business in the county. Moreover, the Commissioners are entitled to traveling expenses incurred while traveling outside the county on county business never to exceed Three Hundred (\$300.00) Dollars in any one year as provided by H.B. 84, supra." (Underscoring ours)

It was further held in our Opinion No. O-6604:

"We believe that by the use of the words 'actual expenses incurred while traveling outside of the county on official business', the Legislature meant only the actual and necessary expenses so incurred. Gasoline and oil, if a car is used, or bus or train fare and meals and lodging, would seem to come within this category. We are enclosing a copy of our Opinion No. O-5598 in regard to certain traveling expenses of County Commissioners incurred within a county, which defines in general terms the type of traveling expenses allowed. The law does not authorize mileage to be charged for such traveling. Neither does it authorize any traveling expenses of the County Commissioners incurred on business without the county, regardless of the nature of the county business, to be paid from any fund other than the General Fund of the county."

It will be noted from the foregoing that Section 1a of Article 2350, above quoted, provided that

"the Commissioners' Court is authorized to pay the actual traveling expenses incurred while traveling outside of the county on official business never to exceed \$300.00 in any one year for each said official." The phrase "for each said official" refers to those officials mentioned in the preceding paragraph. The only officials named in the preceding paragraph are the county commissioners and, therefore, it is the opinion of this Department that only county commissioners are entitled to traveling expenses provided for in Art. 2350, Sec. 1a. It is further our opinion that the clerk of the Commissioners' Court is not entitled to traveling expenses under said Act.

SUMMARY

County Commissioners are entitled to the actual and necessary traveling expenses incurred while traveling outside the county on official county business, never to exceed \$300.00 by virtue of the provisions of Sec. 1a, Art. 2350, V.C.S., for any one year for said official; but the county clerk is not entitled to traveling expenses under Sec. 1a, Art. 2350, V.C.S.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

John Reeves
John Reeves
Assistant

JR:djm:erc

APPROVED MAY 15, 1947

Price Daniel
ATTORNEY GENERAL