



**OFFICE OF  
THE ATTORNEY GENERAL**

**AUSTIN, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

June 28, 1947

Hon. Perry L. Jones,  
County Attorney,  
Travis County,  
Austin, Texas

Opinion No. V-270

Re: Constitutionality of  
H. B. 100, Acts 50th  
Legislature, 1947,  
relative to compensa-  
tion of county treas-  
urers.

Dear Sir:

We refer to your letter of April 24, 1947,  
to this Department which is as follows:

"The current Legislature has passed House Bill No. 100 permitting the Commissioners' Court in 'counties of Texas having a population of more than ninety thousand (90,000), and less than one hundred and twelve thousand (112,000), according to the last preceding Federal Census,' to pay the County Treasurer up to thirty-six hundred (\$3600.00) Dollars per year.

"In as much as this is one of the so-called 'Bracket Bills', I am writing, at the request of the County Auditor, to get your opinion as to whether or not this Bill is constitutional particularly in regard to the bracket matter. I am enclosing a copy of House Bill No. 100."

The pertinent part of the Bill is as follows:

"Section 1. Section 13, Subsection (d), Chapter 465, General and Special Laws, Forty-fourth Legislature, Second Called Session, as amended by House Bill No. 161, Regular Session, Forty-sixth Legislature, as amended by Chapter 61, Acts, Forty-seventh Legislature, is hereby amended to hereafter read as follows:

"(d) The Commissioners Court of the respective counties of Texas having a population of more than ninety thousand (90,000), and less than one hundred and twelve thousand (112,000), according to the last preceding Federal Census, are hereby authorized to fix the salary of the County Treasurer of the particular county at a sum not less than Six Hundred Dollars (\$600) per year, nor more than Thirty-six Hundred Dollars (\$3600) per year."

The provisions of Article III of the Constitution applicable are as follows:

"Sec. 56. The Legislature shall not, except as otherwise provided in this constitution, pass any local or special law, authorizing: . . .

"Regulating the affairs of counties, cities, towns, wards or school districts;  
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Section 13 of Article 3912a is in part as follows:

"Sec. 13. The Commissioners' Court in counties having a population of twenty thousand (20,000) inhabitants or more, and less than one hundred and ninety thousand (190,000) inhabitants according to the last preceding Federal Census, is hereby authorized and it shall be its duty to fix the salaries of all the following named officers, to-wit: sheriff, assessor and collector of taxes, county judge, county attorney, including criminal district attorneys and county attorneys who perform the duties of district attorneys, district clerk, county clerk, treasurer, hide and animal inspector. 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 by him in his official cap-

acity for the fiscal year 1935, and not more than the maximum amount allowed such officer under laws existing on August 24, 1935; . . ."

It will be noted that the bill in question is made applicable to those counties having a population of more than 90,000 and less than 112,000. Upon checking the population census of each county of the State, we find that at the present time there are four counties in the State having a population of more than 90,000 and less than 112,000, to-wit: Travis, 111,053; Hidalgo, 106,059; McLennan, 101,898; and Nueces, 92,661. The population census further reveals that El Paso County has a population of 131,597. The general provisions of all the statutes setting the salaries of county treasurers in counties with a population of not less than 20,000 and not more than 190,000 inhabitants fixes a maximum salary of \$2,000.00 per annum (Art. 3912e, Sec. 13, and Article 3943, V.C.S.); together with the 25% increase as allowed by S. B. 123, Acts 49th Legislature; Sec. 13 of Article 3912e, supra. Inasmuch as there is no other law governing the treasurer's salary which is applicable to El Paso County, said salary is governed by the provisions of Section 13 of Article 3912e, supra, as amended in 1945, and the maximum salary which the treasurer of El Paso County may receive is \$2,500.00, even though its population is far in excess of that of any county coming within the bracket of H. B. 100.

The Bill further provides for a minimum salary of not less than \$600 per annum, while the General Laws (Art. 3912e, Sec. 13) sets minimum salaries of the county treasurers in counties with a population of not less than 20,000 nor more than 190,000 inhabitants at not less than the total sum earned as compensation by them in their official capacities for the fiscal year 1935. Therefore, the Commissioners' Courts of the particular counties coming within the bracket of the Bill can set the salaries of the county treasurer in their respective counties at a much less salary than provided for by Article 3912e, Sec. 13, even though the county treasurer is serving in a county whose population is far in excess of those counties wherein the minimum salary of the county treasurer is

not less than that earned in 1935, and much greater than \$600 per annum.

The question for decision here is whether the classification is arbitrary and unreasonable or whether the population of the counties embraced within the bill bears a reasonable or logical relationship to the question of the amount of work required of the county treasurer and the need for an increase in the annual salary of said officer. In other words, whether the Legislature may legally classify these four counties and authorize the Commissioners' Courts thereof to pay their respective county treasurers an annual salary of \$3600.00 when El Paso County (a much larger county) is only authorized to pay its treasurer an annual salary not to exceed \$2500.00 per annum.

In regard to local and special laws, the Texas Supreme Court in *Bexar County v. Tynan*, 97 S.W. 2d 467, held void an act of the Legislature which fixed the compensation of the county officers in counties of not less than 290,000 nor more than 310,000 at an amount less than officers in some counties of smaller population could receive. We quote from the opinion as follows:

" . . . the Legislature may classify counties upon a basis of population for the purpose of fixing compensation of county and precinct officers, yet in doing so the classification must be based upon a real distinction, and must not be arbitrary or a device to give what is in substance a local or special law the form of a general law. . .

"The rule is that a classification cannot be adopted arbitrarily upon a ground which has no foundation in difference of situation or circumstances of the municipalities placed in the different classes. There must be some reasonable relation between the situation of municipalities reclassified and the purposes and objects to be attained. There must be something . . . which in some reasonable degree accounts for the division into classes.'

"In the case of Clark v. Finley, 93 Tex. 171, 54 S. W. 343, this Court recognized that substantial differences in populations of counties could be made a basis of legislation fixing compensation of officers, on the theory, as the Court clearly recognized, that the work devolving upon an officer was in some degree proportionate to the population of the county. This has frequently been recognized by courts as creating a sufficient distinction to justify a larger compensation for county officers in counties having a large population as compared with compensation to like officers in counties having a small population. Conversely, we think it true that if the Legislature ignores the obvious fact that the work of county officers is proportionate to population and classifies counties in such a way that the compensation of officers of a county having a large population is fixed far below the compensation allowed like officers in small counties, such action amounts to fixing a classification which is arbitrary and which has no true relevancy to the purpose of the legislation." (Emphasis ours)

It is readily apparent that H. B. No. 100 authorizes payment of salaries to county treasurers in four counties greatly in excess of the salary allowed the county treasurer of El Paso County, a county with a much larger population, under the general law in which all of such counties are embraced. Section 13 of Article 3912e, supra.

If this is not a local or special law, what reason can be assigned for holding it to be a general law? Can it be said that the classification is reasonable and not arbitrary or that the classification is real when it allows the county treasurers in counties of a much smaller population to receive a much greater salary than the county treasurers in all the other counties having a population of at least 112,000 and not more than 190,000 (including El Paso County) and when also at the same time it allows the Commissioners' Courts of counties having a much greater population to set the salaries of the county treasurers in those counties coming within its brackets as low as \$600 per annum, a much less salary than may be allowed the county treasurers under Section 13 of Article 3912e, supra, even though the county might

not have a population of more than 20,000 inhabitants?  
We think not.

Therefore, in view of the foregoing, you are respectfully advised that it is the opinion of this Department that H. B. No. 100 is in contravention of Section 56 of Article III of the Constitution and is a local or special law and, therefore, is invalid and unconstitutional in this respect.

SUMMARY

House Bill No. 100, 50th Legislature, providing for the fixing of salaries of county treasurers in counties having a population between 90,000 and 112,000 is unconstitutional, the classification being unreasonable and not real. *Bexar Co. v. Tynan*, 97 S. W. 2d 467.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

By

*Bruce Allen*

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Assistant

BA:djm:WB

APPROVED:

*Price Daniel*

ATTORNEY GENERAL