



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

July 16, 1948

Hon. Leo C. Buckley  
County Attorney  
Zapata County  
Zapata, Texas

Opinion No. V-637

Re: Questions regarding  
form and procedure  
respecting the bond  
required of the County  
Attorney.

Dear Sir:

Reference is made to your recent request  
which reads as follows:

"On June 14, 1948, the Commissioners' Court of Zapata County appointed me County Attorney, subject to the required bond and oath. In connection with executing and filing the required bond, I note what appears to be a conflict in the pertinent statutes.

"Article 330, Vernon's Revised Civil Statutes, reads: 'Each county attorney shall execute a bond payable to the Governor in the sum of twenty-five hundred dollars, with at least two good and sufficient sureties to be approved by the Commissioners Court of his county, conditioned that he will faithfully pay over in the manner prescribed by law all moneys which he may collect or which may come to his hands for the State or any county.'

"Article 5998 provides the alternative of having such bond made by a 'solvent surety company authorized to do business in this State'.

"Articles 5999 and 6000 read consecutively as follows:

"The bond of each officer who is required by law to give an official bond payable to the Governor or to the State shall

be deposited with the Comptroller by the officer who approves the same, except that of the Comptroller which shall be deposited with the Secretary of State.'

"All official bonds of county officers that are required by law to be approved by the commissioners court, and which have been so approved, shall be made payable to the county judge and kept and recorded by the county clerk in a book kept for that purpose.'

"In view of the seeming discrepancy between the provisions of Article 330 and Article 6000, I should appreciate your informing me:

"1. To whom should my bond be payable --- the Governor, or the County Judge?

"2. Must it be approved by the Commissioners' Court?

"3. With whom is it to be filed --- the Comptroller, the County Clerk, or both?"

In Sutherland Statutory Construction, Vol. 2, pages 541-42-43, we find the following:

"General and special acts may be in pari materia. If so, they should be construed together. Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail, regardless of whether it was passed prior to the general statute, unless it appears that the legislature intended to make the general act controlling."

Also, in the case of Townsend v. Terrell, 16 S.W.(2d) 1063 (Tex. Com. App.) the court said:

"It is only where acts are so inconsistent as to be irreconcilable that a repeal by implication will be indulged. If there exists such conflict, then there

is a presumption of the intention to repeal all laws and parts of laws in conflict with the clear intention of the last act. This is necessarily true where both acts cannot stand as valid enactments.

"This rule of construction has found frequent and apt illustration where one of the supposedly conflicting statutes was general in its terms and the other specific. In such a case it is universally held that the specific statute more clearly evidences the intention of the Legislature than the general one, and therefore that it will control. In such a case both statutes are permitted to stand - the general one applicable to all cases except the particular one embraced in the specific statute. . ."

Article 330, V. C. S. deals exclusively with the subject of county attorneys' bonds, while Article 6000, V. C. S. deals with county officials' bonds generally. In view of the foregoing, it is our opinion that the bond of the county attorney should be made payable to the Governor.

In the case of *Luckey v. Short*, 20 S.W. 723, the court said:

"While it is made by law the duty of the commissioners' court to approve the bond of the county attorney, no time is fixed at or within which this shall be done."

Therefore, in view of the foregoing, it is our opinion that the bond of the county attorney must be approved by the commissioners' court.

We are unable to find a case where the courts have passed upon your last question directly. However, in the case of *Bachus v. Foster*, 132 Tex. 183, 122 S.W. (2d) 1058 (Tex. Com. App.) opinion adopted in deciding the question of venue in a suit on a sheriff's bond where the facts showed that the bond had been filed with the County Clerk, the court said:

"As we have seen, the bond sued on is the official bond of Virge Foster, as sheriff of Eastland County. By Article 6866, this bond is required to be approved by the Commissioners Court of Eastland

County, and by Article 6000 of the Statutes the same is required to be 'safely kept and recorded by the county clerk' of that county. It thus appears that said bond is required by law to be filed in Eastland County."

Article 6000 above cited provides that all official bonds of county officers that are required by law to be approved by the commissioners' courts and which have been so approved shall be safely kept and recorded by the county clerk. The County Attorney is, of course, a public officer, 15 Tex. Jur. 385. The Supreme Court in the Backus case having recognized that the county official's bond was properly filed with the County Clerk, it follows by implication that the bond should also be kept by him.

Article 8866, V. C. S. provides that the bond of the sheriff shall be made payable to the Governor, and Article 330, V. C. S. provides that the bond of the county attorney shall be made payable to the Governor. Hence, we believe the holding in the above quoted case is also applicable to the county attorney's bond. Therefore, by virtue of the foregoing, it is our opinion that the bond of the county attorney should be filed in the office of the county clerk after being approved by the commissioners' court.

SUMMARY

The official bond of the county attorney should be made payable to the Governor. Art. 330, V. C. S. Such bond should be approved by the Commissioners' Court. *Luckey vs Shert*, 20 S.W. 723. The official bond of the county attorney should be kept and filed in the office of the county clerk after such approval. Article 6000; *Backus vs Foster*, 122 S.W. (2d) 1958.

Yours very truly,

APPROVED:

ATTORNEY GENERAL OF TEXAS

*Fagan Dickson*

FIRST ASSISTANT  
ATTORNEY GENERAL

By *Bruce Allen*  
Bruce Allen  
Assistant

BA:rw:jrb