



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

**PRICE DANIEL  
ATTORNEY GENERAL**

August 9, 1948

Hon. Nathan M. Holt  
County Attorney  
Panola County  
Carthage, Texas

Opinion No. V-658

Re: The legality of paying to the surviving widow of a County Commissioner the salary which he could have earned during the remainder of his term of office.

Dear Sir:

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

"This office has been requested to render an opinion on the question of payments to a surviving widow of the remainder of the salary that could have been earned by a Commissioner of this County during the remainder of his term of office."

In your brief which was appended to the request and which concluded that your question should be answered in the negative, you submitted the following facts:

"J. K. Holt, commissioner of Prct. 2, Panola County, Texas, died July 1, 1948. His surviving widow, Mrs. Etta Finklea Holt, now demands that she be paid in a lump sum an amount equivalent to the salary that would have been earned by her husband for the remainder of his term in office. His salary was \$300.00 per month. The Commissioners' Court, being in sympathy with the widow, now desires to pay the amount, and has passed an order that this amount be paid out of the General Fund. The Commissioners' salaries are paid out of the Road and Bridge fund in this county as the necessary transfers to effect same were made at the beginning of the year."

In the case of Galveston H. & S.A. Ry. v. Uvalde County, 167 S.W.(2d) (Civ.App., 1942, error refused) the court said:

"The Commissioners' Court of a county has only such powers as are expressly or by necessary implication given it by the Constitution and statutes of this State."

We have not found any provision in the Constitution or any statute which authorizes Commissioners' Courts to make such a payment. On the contrary, Section 52 of Article III of the State Constitution provides, in part:

"The Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever . . . ."

Since the payment in question would only be a gift and not in payment for services rendered by the claimant, and in view of the foregoing, it is our opinion that you are correct in your conclusion that the Commissioners' Court may not pay to the surviving widow of a deceased County Commissioner the remainder of the salary that could have been earned by such County Commissioner during the remainder of his term of office.

SUMMARY

The Commissioners' Court may not pay to the surviving widow of a deceased County Commissioner the remainder of the salary that could have been earned by such County Commissioner during the remainder of his term of office had he lived.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

APPROVED:

*Price Daniel*  
ATTORNEY GENERAL

BA:b:mw

By

*Bruce Allen*  
Bruce Allen  
Assistant