



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

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ATTORNEY GENERAL

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FIRST ASSISTANT

January 29, 1949

Hon. John C. Bianchi
County Auditor
Victoria County
Victoria, Texas

Opinion No. V-764.

Re: Maximum compensation of
County Auditor who is al-
so acting as Purchasing
Agent for the County.

Dear Sir:

Your request for an opinion is in part as follows:

"Please give me an opinion covering the maximum salary of the Auditor of Victoria County, who is also acting and performing the duties of Purchasing Agent."

Victoria County had a population of 23,741 inhabitants according to the 1940 Federal Census and an assessed valuation of \$33,693,750.00 according to the last approved tax rolls.

Article 1646 V. C. S. is therefore applicable to Victoria County. It provides as follows:

"When the Commissioners' Court of a county . . . shall determine that an Auditor is a public necessity . . . and shall enter an order upon the minutes of said Court . . . and shall cause such order to be certified to the District Judge or District Judges . . . said Judge or Judges shall . . . appoint a County Auditor . . . who shall qualify and perform all the duties required of County Auditors by the laws of this State, and who shall receive as compensation for his services as County Auditor an annual salary of not more than the annual total compensation and/or salary allowed or paid the Assessor and Collector of Taxes in his county, and not less than the annual salary allowed such County Auditor under the General Law pro-

vided in Article 1645, Revised Civil Statutes, as said Article existed on January 1, 1940, such salary of the County Auditor to be determined and fixed by the District Judge or District Judges having jurisdiction in the county, a majority thereof ruling, said annual salary to be paid monthly out of the general fund of the county."

In view of the plain provisions of Article 1646 the County Auditor cannot be paid a salary in excess of the amount of compensation "allowed or paid the Assessor-Collector of Taxes." The salary of the Assessor-Collector of Taxes of Victoria County is governed by Section 13 of Article 3912e V. C. S., which reads in part as follows:

"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 capacity for the fiscal year 1935, and not more than the maximum amount allowed such officer under laws existing on August 24, 1935; provided that in counties having a population of twenty thousand (20,000) and less than thirty-seven thousand five hundred (37,500) according to the last preceding Federal Census, and having an assessed valuation in excess of Fifteen Million (\$15,000,000.00) Dollars, according to the last approved preceding tax roll of such county the maximum amount allowed such officers as salaries may be increased one (1%) per cent for each One Million (\$1,000,000.00) Dollars valuation or fractional part thereof, in excess of said Fifteen Million (\$15,000,000.00) Dollars valuation over and above the maximum allowed such officers under laws existing on August 24, 1935; . . ."

The maximum amount of compensation that may be allowed the Assessor-Collector in Victoria is \$4,-372.50. We arrive at this figure as follows:

The maximum amount allowed under Articles 3883 and 3891, V. C. S., as they existed on August 24, 1935, was \$3,000.00. Since Victoria County has an

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assessed valuation of \$33,693,750.00, the County officers may receive an increase of \$570.00 (19% of \$3,000.00).

Under the provisions of subdivision (e) of Section 13 of Article 3912e the Commissioners' Court may allow an additional increase not to exceed 25% of the sum allowed under the law for the fiscal year 1944. Since Victoria County had an assessed valuation in 1943 of \$21,180,340.00, the sum allowed under the law for the county officers in 1944 was \$3,210.00 (\$3,000.00 plus \$210.00 or 7% of \$3,000.00). Under subdivision (e) of Section 13 of Article 3912e the Commissioners' Court may allow the county officers an additional increase of \$802.50 (that being 25% of \$3,210.00). Therefore, the maximum in 1949 is \$4,372.50 (base salary of \$3,000.00 plus \$570.00 increase based on 1948 assessed valuation plus \$802.50 increase based on 25% of maximum allowed in 1944)

We are not informed whether the Tax Assessor-Collector is actually allowed or paid the maximum of \$4,372.50. If the Assessor-Collector is paid this amount, the maximum that may be paid the County Auditor under the provisions of Article 1646 would be \$4,372.50. If the Assessor-Collector is paid a salary less than \$4,372.50, the County Auditor could not be paid \$4,372.50, but only the amount allowed or paid the Assessor-Collector.

Your question relative to whether the County Auditor is entitled to additional compensation when he acts as Purchasing Agent for the county is answered by Attorney General's Opinion No. 0-1338 wherein it is stated:

"The powers and duties of a County Auditor are variously defined in Articles 1651 through 1676a. . . . Nowhere is the Auditor authorized to act as Purchasing Agent under the Texas statute.

". . . there is no method under the statutes whereby extra compensation could be provided for the County Auditor upon his acting in such additional capacity as the Purchasing Agent.

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"Therefore, the duty of acting as Purchasing Agent, not being prescribed by law, incident to the office of County Auditor, and no additional compensation being allowable therefor, you are respectfully advised that it is the opinion of this department that a County Auditor, appointed under Articles 1646 and 1647, could not be directed to act also in the capacity of Purchasing Agent for the county."

SUMMARY

The maximum salary which may be paid the County Auditor of Victoria County is that sum which is allowed or paid the Assessor-Collector of Taxes in his county. If the Assessor-Collector is paid the maximum allowed under Article 3912e, Section 13, V. C. S., the maximum salary which may be paid the County Auditor would be \$4,372.50 per annum. Article 1646 V. C. S. The County Auditor is not entitled to additional compensation for acting as Purchasing Agent for the County. Attorney General's Opinion No. 0-1338.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

JR:bh

By 
John Reeves
Assistant

APPROVED


FIRST ASSISTANT
ATTORNEY GENERAL