



PRICE DANIEL

ATTORNEY GENERAL

**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

affirms 0-5091

September 24, 1949

Supersedes Opinion
V-750

See Art. 6889d, V.C.S.

Hon. M. B. Campbell
County Auditor
Nacogdoches County
Nacogdoches, Texas

Opinion No. V-912

Re: Salary of constable
for 1949.

Dear Sir:

Your request for an opinion is as follows:

"If the Commissioners' Court of Nacogdoches County in January 1949 set salaries of constables without taking into consideration and basing such salaries on earnings of constables in 1935, may the same Court now before the end of the year 1949, re-set these salaries and reduce them?

"May the Commissioners' Court set constables' salaries at fixed amounts, and at the same time in addition to these salaries allow said constables to collect and retain fees of office and mileage as part of their compensation."

From January 1, 1949, until the effective date of Senate Bill 92, Acts of the 51st Legislature, (June 6, 1949) the amount of salaries to be paid the constables in counties where the precinct officers, other than the constables, were compensated on a "fee basis," was left to the discretion of the Commissioners' Court. A.G. Opinion No. V-749, a copy of which is enclosed.

Sections 1 and 3 of Senate Bill 92 of the 51st Legislature provide:

"Section 1. The Commissioners Court in each county of this State is hereby authorized, when in their judgment the financial condition of the county and the needs of the officer justify the increase, to enter an order increasing the compensation of the precinct, county and district officers, or either of them, in an additional amount not to exceed twenty-five (25%) per cent of the sum allowed under the law for the fiscal year of 1948, whether paid on fee or salary basis; provided, however, the members of the Commissioners Court may not raise the salaries of any of such Commissioners Court under the

terms of the Act without raising the salary of the remaining county officials in like proportion.

"Sec. 3. All of said officers who were paid on a fee basis during the fiscal year of 1948, and who are now to be paid on a salary basis, shall be paid 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 of 1935, and not more than the maximum sum allowed such officer under the laws existing on August 24, 1948, together with the twenty-five (25%) per cent increase allowed by this Act within the discretion of the Commissioners Court."

Section 3, above quoted, places a minimum and maximum on the salary to be paid the constable; the minimum being not less than the total sum earned as compensation by him for the fiscal year 1935. Therefore, from June 6, 1949, (the effective date of S.B. 92) the constables were entitled to annual salaries of not less than the total sum earned by them in 1935.

The Commissioners' Court is authorized by the provisions of Section 1 above quoted, to raise the salaries of the constables in an additional amount not to exceed twenty-five per cent of the maximum sum allowed such officers under the law for the fiscal year 1948.

You have informed us in answer to our request for additional information that the constables of Nacogdoches County from January 1, 1949, until the present date are being paid annual salaries of \$1500.00 per annum. You further state that these salaries are in excess of the total sum earned by said officials for the fiscal year 1935. The Commissioners' Court of Nacogdoches County is authorized by the provisions of Section 1, above quoted, to raise the salaries of the constables in an additional amount not to exceed twenty-five per cent of the maximum sum allowed such officers under the law for the fiscal year 1948. There is no provision, however, in Senate Bill 92 which would prohibit the Commissioners' Court to change the salaries of the constables so long as they are paid the minimum fixed in said Act.

In Attorney General Opinion No. 0-5061 the question before the Attorney General at that time was whether the action of the Commissioners' Court in raising the salary of the district clerk within the minimum and maximum limits provided by law after the salary had once been set was valid. It was held in this opinion that:

"We have likewise been unable to find any authorities forbidding the action taken by the commissioners' court. It is true that Section 2 of Article 3912e, V.A.C.S., requires the commissioners' court of every county in Texas at its first regular meeting in January of each year to

determine whether certain precinct officers shall be placed on a salary or fee basis; this section also provides that in counties having a population of less than 20,000 inhabitants, according to the last preceding Federal Census that each commissioners' court shall at its first regular meeting in January of each year determine whether its county officers should be placed on a salary or fee basis. Section 15 of Article 3912d, V.A.C.S., also provides that the commissioners' court in counties having a population of less than 20,000 inhabitants, according to the last preceding Federal Census, at the first regular meeting in January of each calendar year, may pass an order providing for compensation of all county and precinct officers on a salary basis. However, Sections 2 and 15 of Article 3912e, V.A.C.S., do not apply to the county officers of Brazoria County, said county having a population in excess of 20,000 inhabitants according to the last preceding Federal Census. Section 13 of Article 3912e, V.A.C.S., which governs the salaries of the county officers of Brazoria County, contains no specific requirement that salaries be set at the first regular meeting of the commissioners' court in January of each year."

It is noted that the reason for holding that the salary of the district clerk could be changed was that there was no law requiring the commissioners' court to set the salaries of officials governed by Section 13 of Article 3912e, Vernon's Civil Statutes, to be set at its first regular meeting in January. Furthermore, it was pointed out that there was no provision in said Article which would prohibit the commissioners' court from changing the salaries previously set. We believe the reasoning in Attorney General Opinion No. O-5061 is sound. We therefore affirm said opinion.

In the instant case, salaries of constables are no longer governed by Section 2 of Article 3912e, which required the commissioners' court in every county, at its regular meeting in January, to determine whether precinct officers shall be compensated on a salary or fee basis. Section 61 of Article XVI of the Constitution of Texas as amended in November, 1948, placed all constables in the State on a salary basis beginning January 1, 1949.

In view of the foregoing, it is our opinion that the commissioners' court of Nacogdoches County may now set the salaries of constables at any sum not less than the total earned by them as compensation for the fiscal year 1935 nor more than the maximum sum allowed such officers under laws existing on August 24, 1948, together with the twenty-five per cent increase allowed by Senate Bill 92.

Following the reasoning in Attorney General Opinion No. O-5061, it is our opinion that the salaries of constables may be raised or lowered

Hon. M. B. Campbell, page 4 (V-912)

at any time during the year so long as the salaries remain within the minimum and maximum amounts allowed by law.

In Attorney General Opinion No. V-71, it was held that the commissioners' court did not have authority to allow a constable who is compensated on a salary basis mileage for the use of his automobile in the discharge of official business. We enclose a copy of this prior opinion. We have been unable to find any statutory provisions subsequent to the date of this foregoing opinion which would authorize the constable of Nacogdoches County mileage for the use of his automobile in the discharge of official duties.

SUMMARY

Under the provisions of Senate Bill 92, Acts of the 51st Legislature, the constables of Nacogdoches County are entitled to an annual salary of not less than the total sum earned by them as compensation for the fiscal year 1935 and not more than the maximum sum allowed such officers under laws existing August 24, 1948; and the salaries of constables may be reduced or raised so long as the salaries so changed remain within the minimum and maximum allowed by law. A.G. Opinion No. O-9061.

Constables cannot be allowed to retain fees of office but must pay all fees earned into the County Treasury. Art. XVI, Sec. 61, Const. of Texas.

The commissioners' court of Nacogdoches County is not authorized to allow the constables mileage for the use of their automobile in the discharge of official duties. A. G. Opinion No. V-71.

Yours very truly,

JR:dh:mv:egw:lm

ATTORNEY GENERAL OF TEXAS

APPROVED

By /s/ John Reeves
John Reeves
Assistant

/s/ Joe R. Greenhill

FIRST ASSISTANT
ATTORNEY GENERAL