



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN, TEXAS

ICE DANIEL  
ORNEY GENERAL

March 8, 1950

Hon. W. C. Hancock  
County Attorney  
Camp County  
Pittsburg, Texas

Opinion No. V-1019.

Re: The disposition to be made of fees paid to a Justice of the Peace for acting as a local registrar of births and deaths.

Dear Sir:

Your request for an opinion reads in part as follows:

"Pittsburg, Texas is an incorporated town which according to the last federal census has a population in excess of 2,500, and is located within the boundaries of Justice of the Peace Precinct 1 of Camp County, Texas. J. Tom Laney is the duly qualified and acting Justice of the Peace of Precinct 1.

"The Justice of Peace of Precinct 1 has for years acted as the recorder of births and deaths for the entire county. He was appointed by the State Department of Health as the recorder for the city of Pittsburg upon the recommendation and confirmation of the mayor of the city of Pittsburg, Texas, and has received compensation as is provided for such services. . .

"Inasmuch as the Justice of the Peace of Precinct 1 is acting as the local registrar in the city of Pittsburg by virtue of his appointment by the State Department of Health with the confirmation of the Mayor of said city, are the fees paid to him for such services, fees of office as Justice of the Peace of Precinct 1, and should they be reported on his annual report as such?"

The State Comptroller informs us that the Justices of the Peace of Camp County are compensated on a

fee basis.

Rule 55a of Article 4477, V.C.S., provides:

"That each local registrar is hereby charged with the strict and thorough enforcement of the provisions of this Act in his registration district, under the supervision and direction of the state registrar. And he shall make an immediate report to the state registrar of any violation of this law coming to his knowledge, by observation or upon complaint of any person, or otherwise.

"The state registrar is hereby charged with the thorough and efficient execution of the provisions of this act in every part of the state, and is hereby granted supervisory power over local registrars, deputy local registrars, and subregistrars, to the end that all of its requirements shall be uniformly complied with. The state registrar, either personally or by an accredited representative, shall have authority to investigate cases of irregularity or violation of law, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of any of the provisions of this Act to the county attorney, with a statement of the facts and circumstances; and when any such case is reported to him by the state registrar, the county attorney shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. And upon request of the state registrar, the attorney general shall assist in the enforcement of the provision of this Act."

Article 781a of Vernon's Penal Code provides in part:

". . . or (e) being a local registrar, deputy registrar, or subregistrar, shall fail, neglect, or refuse to perform his duty as required by this Act and by the instructions, and direction of the state registrar

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thereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined not less than five dollars (\$5.00) nor more than fifty dollars (\$50.00), and for each subsequent offense not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00), or be imprisoned in the county jail not more than sixty days, or be both fined and imprisoned."

In view of the foregoing we assume that the appointment by the State Health Department of the Justice of the Peace of Precinct 1 as recorder of births and deaths for the City of Pittsburg was in pursuance of Rule 36a of Article 4477, V.C.S., which provides:

"For the purposes of this Act the State shall be divided into Primary Registration Districts as follows: Each Justice of the Peace Precinct and each incorporated town of two thousand, five hundred (2,500) or more population, according to the last United States Census, shall constitute a Primary Registration District, provided the State Board of Health may combine two or more Registration Districts, or may divide a Primary Registration District into two or more parts, so as to facilitate registration, and in the Justice of the Peace Precinct, the Justice of the Peace shall be Local Registrar, and in cities of two thousand, five hundred (2,500) or more, according to the last United States Census reports, the City Clerk or City Secretary shall be the Local Registrar of Births and Deaths.

"It is hereby declared to be the duty of the Justice of the Peace in the Justice of the Peace Precinct, and the City Clerk or City Secretary in the city of two thousand, five hundred (2,500) or more population, to secure a complete record of each birth and death that occurs within their respective jurisdictions, and have same recorded in the County Clerk's office in their respective counties on or before the tenth of the following month." (Emphasis added)

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In this event it becomes the duty of the Justice of the Peace of Precinct 1 to record said births and deaths of the City of Pittsburg as well as those outside the city limits. In other words, there has been a consolidation or combining of the two registration districts of which the Justice of the Peace has been designated as the Local Registrar of said district.

It was stated in Attorney General Opinion No. 0-1963 as follows:

"We think it proper to here point out that the State Board of Health is given the right and authority to combine two or more registration districts under the above quoted Rule 36a, which, if done by the Board would relieve one of the local registrars from his duties. This, however, is a matter resting solely within the discretion of the Board and in the absence of the exercise of such discretion a justice of the peace is required to serve."

Article 3891 of Vernon's Civil Statutes, which is applicable to county and precinct officers who are compensated on a fee basis, provides in part:

"The compensation, limitations and maximums herein fixed shall also apply to all fees and compensation whatsoever collected by said officers in their official capacity, whether accountable as fees of office under the present law, and any law, general or special, to the contrary is hereby expressly repealed. The only kind and character of compensation exempt from the provisions of this Act shall be rewards received by Sheriffs for apprehension of criminals or fugitives from justice and for the recovery of stolen property, and moneys received by County Judges and Justices of the Peace for performing marriage ceremonies, which sum shall not be accountable for and not required to be reported as fees of office." (Emphasis added)

In a letter opinion to Hon. Tom C. King, State Auditor, dated August 11, 1938, this office held that fees collected by a Justice of the Peace, compensated on

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a fee basis, for acting as Registrar of Vital Statistics are fees of office and accountable as such.

In view of the foregoing it is our opinion that all fees collected by the Justice of the Peace of Precinct No. 1 as Local Registrar of the City of Pittsburg should be reported and accounted for in his annual report.

SUMMARY

Where two registration districts have been combined, the Justice of the Peace who has been designated as Local Registrar in such consolidated district should report and account for all fees collected by him as Local Registrar. Rule 36a, Art. 4477, and Art. 3891, V.C.S.

Yours very truly,

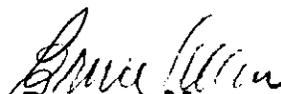
PRICE DANIEL  
Attorney General

APPROVED:

J. C. Davis, Jr.  
County Affairs Division

Charles D. Mathews  
Executive Assistant

By

  
Bruce Allen  
Assistant

BA:mw