



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

December 8, 1950

Hon. Wm. N. Hensley  
Criminal District Attorney  
Bexar County  
San Antonio, Texas

Opinion No. V-1127.

Re: Whether Article 6829a,  
V.C.S., authorizing a  
State or district of-  
ficer in military serv-  
ice to direct payment  
of his compensation to  
one temporarily fill-  
ing the office applies  
to a Criminal District  
Attorney.

Dear Sir:

Your request for an opinion reads in part as follows:

"1. Do the provisions of H.B. No. 717, Acts 48th Legislature, p. 693, ch. 384 (Art. 6829a, V.A.C.S.), have application to a Criminal District Attorney who has been called into military service?

"2. If said statute does apply and the Criminal District Attorney complies with the statute by filing the required waiver with the Comptroller, would the Commissioners Court and/or the Auditor of the officer's county be authorized to pay the salary of the office to the person designated to temporarily fill the office during the absence of the regularly elected officer?"

Article 6829a, V.C.S., provides:

"Section 1. Any person holding a State or District office in the State of Texas, whether as a member of the executive, legislative or judicial departments, when called into the military service of either the State or National Governments, is hereby authorized to file with the Comptroller of Public Accounts of the State, a

statement or certificate in writing, to the effect that he waives the payment of his salary or pay or the emoluments of his said office during the period of his military service and authorizing the payment of such salary, pay or emoluments of his office to any other person, who, under the provisions of any law of this State is appointed or elected to temporarily fill such civil office during the absence of such officer, such waiver or assignment to terminate immediately upon the release or discharge of said officer from such military service.

"Sec. 2. Such waiver or assignment shall be sufficient authority for the Comptroller of Public Accounts of the State of Texas to issue State warrants and to pay such person so holding such officer's position during his absence in military service out of appropriations made by the Legislature for such office.

"Sec. 3. The filing with the Comptroller of Public Accounts of the State of Texas of such waiver or assignment provided for in this Act shall never be construed by any Court of this State to be a resignation from his office by the person entering the military service of the State or National Governments or that his office is vacant by reason thereof."  
(Emphasis added.)

The emphasized portion of Article 6829a, Vernon's Civil Statutes, shows conclusively that its provisions are only applicable to persons holding a State or district office in the State of Texas whose salaries are paid by warrants issued by the Comptroller of Public Accounts of the State of Texas and to no other. Although the Criminal District Attorney of Bexar County is a district officer within the meaning of certain statutes, his salary is not paid by warrants issued by the Comptroller of Public Accounts on the State Treasury, but is paid by the county from the County Officer's Salary Fund, to which the State makes an apportionment. Att'y Gen. Op. 0-6676 (1945).

Therefore, in answer to your questions, you are

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advised that the provisions of Article 6829a are not applicable to the Criminal District Attorney of Bexar County.

SUMMARY

The provisions of Article 6829a, authorizing an officer to direct payment of his compensation to one temporarily filling the office, are not applicable to the Criminal District Attorney of Bexar County because his salary is not paid by warrants issued by the Comptroller of Public Accounts.

APPROVED:

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County Affairs Division

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JR:mw

Yours very truly,

PRICE DANIEL  
Attorney General

By   
John Reeves  
Assistant