



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL  
ATTORNEY GENERAL**

June 12, 1951

Hon. Evans J. Adkins  
County Attorney  
McCulloch County  
Brady, Texas

Opinion No. V-1185.

Re: Legality of a county  
attorney's accepting  
employment by a muni-  
cipality to prosecute  
corporation court cases.

Dear Mr. Adkins:

Your request for an opinion of this office pre-  
sents the following question:

"Can a County Attorney be employed by  
a municipal corporation to prosecute cases  
in corporation court either on a fee or  
salary basis?"

Section 21 of Article V, Constitution of Texas,  
provides in part:

" . . . The county attorneys shall re-  
present the State in all cases in the Dis-  
trict and inferior courts in their respective  
counties; but if any county shall be included  
in a district in which there shall be a dis-  
trict attorney, the respective duties of dis-  
trict attorneys and county attorneys shall  
in such counties be regulated by the Legis-  
lature. . . ."

By the express terms of the above constitution-  
al provision and under the decisions of the courts of this  
State, "the county attorney has the right, and is charged  
with the duty, to represent the state in all prosecutions  
instituted for the violation of the criminal laws of the  
state in the corporation court, notwithstanding such pros-  
ecutions may appear to be for violation of ordinances of  
the city covering the same ground." (Emphasis added.)  
See Att'y Gen. Op. V-1147 (1951); Howth v. Greer, 90 S.W.  
211 (Tex.Civ.App. 1905, error ref.); Harris County v.  
Stewart, 91 Tex. 133, 41 S.W. 650 (1897); Upton v. City  
of San Angelo, 94 S.W. 436 (Tex.Civ.App. 1906).

Article 869, V.C.C.P., provides:

"All prosecutions in a corporation court shall be conducted by the city attorney of such city, town or village, or by his deputy. The county attorney of the county in which said city, town or village is situated may, if he so desires, also represent the State in such prosecutions. In such cases, the said county attorney shall not be entitled to receive any fees or other compensation whatever for said services. The county attorney shall have no power to dismiss any prosecutions pending in said court unless for reasons filed and approved by the recorder." (Emphasis added.)

The statute expressly prohibits the county attorney from receiving any fees or compensation whatever for services rendered in prosecutions in a corporation court. Therefore, in answer to your question, it is our opinion that a county attorney may not be employed on a fee or salary basis for prosecutions in a corporation court.

SUMMARY

A county attorney may not be employed on a fee or salary basis to prosecute cases in the corporation court. Att'y Gen. Op. V-1147 (1951); Art. 869, V.C.C.P.

APPROVED:

J. C. Davis, Jr.  
County Affairs Division

Jesse P. Luton, Jr.  
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Charles D. Mathews  
First Assistant

BW:mv

Yours very truly,

PRICE DANIEL  
Attorney General

By   
Burnell Waldrep  
Assistant