



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

August 3, 1951

Hon. B. F. McKee  
County Auditor  
Hidalgo County  
Edinburg, Texas

Opinion No. V-1230

Re: Authority of the Commissioners' Court to waive limitations and pay the County Judge for services as a member of the Juvenile Board when the salary claim would otherwise be barred by limitations.

Dear Sir:

You have requested an opinion concerning the authority of the commissioners' court to waive limitations and pay the county judge for services as a member of the Juvenile Board, when the salary claim would otherwise be barred by limitations. You ask specifically:

"Does the Commissioners' Court have the authority to waive limitations and is the disbursing officer required to plead limitations?"

The salary claim is based on Article 3912e-5, V.C.S., the constitutionality of which was upheld in Travis County v. Matthews, 235 S.W.2d 691 (Tex.Civ.App. 1950, error ref. n.r.e.). Although the court did not determine the county's authority to waive limitation, it stated at page 698:

"In 53 C.J.S., Limitations of Actions, Sec. 24, p. 959, it is said: 'Power to waive limitations has been held to extend to a state, a county, and a municipal corporation.'

"When a county comes into court it comes as any other litigant. 11 Tex. Jur.pp. 614-615; Brite v. Atascosa County, Tex.Civ. App. San Antonio, 247 S.W. 878 (Writ Dis.); McKinney v. Freestone County, Tex.Com.App., 291 S.W. 529. And, even though a county is essentially an instrumentality of the state,

'the general limitation statutes are with certain defined exceptions available in defense of suits by counties.' Hatcher v. State, 125 Tex. 84, 81 S.W.2d 499, 501, 98 A.L.R. 1213.

"The statute of limitations while no longer an odious plea is one which must be specially pleaded and one which courts do not go out of their way to sustain. Duckworth v. Dallas County Levee Improvement Dist. No. 6, Tex.Civ.App. Austin, 11 S.W.2d 263.

"We believe the tenor of the law on the subject of the right of a county to waive a plea of limitation to be such that no semblance of bad faith can be attached to the action of the Commissioners' Court in abiding by the judgment of the District Court upholding such right."

In Wier v. Silver Bow County, 124 P.2d 1003, 1005 (Mont. Sup. 1942), the court, on this question, held:

"The statute of limitations is a personal privilege which may be waived. It must be pleaded, in order to be available as a defense. The county commissioners have the right and power 'to direct and control the prosecution and defense of all suits to which the county is a party.' Sec. 4465.14 Rev. Codes. It seems clear that the board could decline to plead the statute of limitations whenever it was of the opinion that facts showing the bar of the statute could not be established. This was the implication of the holding in Hicks v. Stillwater County, 84 Mont. 38, 274 P. 296. This is the rule as to municipal corporations. 37 C.J. 721, note 19. And we think the same rule applies to the county through its board of commissioners. If the board could thus waive the statute of limitations by declining to plead it, then it seems equally clear that it could expressly stipulate that the claims are not barred. This is not the same as stipulating to a... conclusion of law, but is equivalent to a stipulation that the facts are not such that the plea of the statute of limitations would be available."

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It has been held by this office that limitation is a matter of affirmative defense which may be waived by the county. Att'y Gen. Op. V-1165 (1951); Letter Opinion to Hon. Jackson S. Webb, County Attorney of Bastrop County, dated November 1, 1949.

In view of the foregoing, it is our opinion that the Commissioners' Court of Hidalgo County is authorized to waive limitations and pay the County Judge of Hidalgo County for services as a member of the Juvenile Board when the salary claim based on Article 3912e-5, V.C.S., would otherwise be barred by limitations.

The pleading or waiving of limitations is the prerogative of the commissioners' court, and no other official is empowered to plead limitations on behalf of the county without authority from the commissioners' court.

#### SUMMARY

The Commissioners' Court of Hidalgo County has authority to waive limitations and pay the county judge for services as a member of the Juvenile Board, although his salary claim would otherwise be barred by limitations. Pleading or waiving limitations is the prerogative of the commissioners' court, and no other officer of the county has authority to invoke such plea. Travis County v. Matthews, 235 S.W.2d 691 (Tex. Civ. App. 1950, error ref. n.r.e.); Wier v. Silver Bow County, 124 P.2d 1003 (Mont. Sup. 1942); Att'y Gen. Op. V-1165 (1951).

APPROVED:

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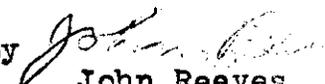
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Yours very truly,

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