



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

January 29, 1952

Hon. Sam W. Davis
District Attorney
Civil Courts Bldg.
Houston 2, Texas

Opinion No. V-1398

Re: Maximum compensation of
the County Treasurer of
Harris County from all
sources, including the
navigation district.

Dear Sir:

You have requested an opinion on the maximum compensation of the county treasurer of Harris County.

House Bill 265, Acts of the 52nd Leg., R.S. 1951, ch. 391, p. 675, passed by the Legislature on May 15, 1951 (Article 3943e, V.C.S.), prescribes the salaries of all county treasurers compensated on a salary basis. Section 5 provides:

"In each county in the State of Texas having a population of at least three hundred thousand and one (300,001) inhabitants, or more, according to the last preceding Federal Census, the Commissioners Court shall fix the salary of the county treasurer at any reasonable sum, providing such salary is not less than Forty-eight Hundred Dollars (\$4800)."

House Bill 206, Acts of the 52nd Leg., R.S. 1951, ch. 122, p. 207, passed by the Legislature on April 19, 1951 (Article 3943d, V.C.S.), prescribes the salary to be paid the county treasurer in counties having a population of six hundred thousand (600,000) inhabitants or more. Section 1 provides:

"That the commissioners court in each county in the State of Texas having a population of six hundred thousand (600,000) inhabitants or more according to the last preceding Federal Census, or any future Federal Census, shall determine annually the salary to be paid to the county treasurer at a reasonable sum of not less than Five Thousand

Dollars (\$5,000) nor more than Eight Thousand Dollars (\$8,000) per annum, and the maximum salary and compensation of said treasurer shall not exceed Eight Thousand Dollars (\$8,000) in the aggregate for any one calendar year. Said treasurer shall be allowed to appoint such assistants as said commissioners court may deem necessary at reasonable salaries, to be determined by said commissioners court. Said assistants shall have the authority to do and perform in the name of such county such acts, either clerical or ministerial in character, as may be required of him by said county treasurer."

Under the provisions of House Bill 206, the maximum salary that may be paid the treasurer of Harris County is limited to \$8,000, while under the provisions of House Bill 265 the maximum salary that may be paid the county treasurer of Harris County is unlimited. Att'y Gen. Ops. V-1320 (1951) and V-1327 (1951).

Thus at the same session of the Legislature there were enacted two statutes dealing with the compensation of county treasurers. The first act passed is restricted in application to counties having over 600,000 inhabitants, and the second act is a comprehensive one concerning the compensation for all county treasurers paid on a salary basis. In 1 Sutherland Statutory Construction (3rd Ed. 1943) 475-77, the rule in this regard is stated as follows:

"The intent to repeal all former laws upon the subject is made apparent by the enactment of subsequent comprehensive legislation establishing elaborate inclusions and exclusions of the persons, things and relationships ordinarily associated with the subject. Legislation of this sort which operates to revise the entire subject to which it relates, by its very comprehensiveness gives strong implication of a legislative intent not only to repeal former statutory law upon the subject, but also

to supersede the common law relating to the same subject."

In passing upon a somewhat similar question, it was held in Attorney General's Opinion V-472 that House Bill 501, Acts of the 50th Leg., 1947, dealing with traveling expense of sheriffs generally, repealed the provisions of Section 19 of Art. 3912e, subdivision (1) providing for traveling expense of sheriffs in counties having in excess of 190,000 inhabitants, stating:

"The Legislature is presumed to have had knowledge of all existing laws dealing with the same subject matter and could have excluded those counties having a population in excess of 190,000 inhabitants, if it had not intended that such counties be included within the Act. This it did not do. Would it not be just as reasonable to say that the Act is not applicable to counties operating on a fee basis or to those counties operating on a salary basis and having a population of not over 190,000 inhabitants as it would to say that it does not apply to those counties having a population in excess of 190,000 inhabitants? In that event the Act would not apply to any county in the State and would be meaningless. It would be attributing to the Legislature the intention of having done a meaningless thing in passing such a bill."

For like reasoning, it is our opinion that House Bill 265, being a later enactment prescribing the salaries to be paid all county treasurers who are compensated on a salary basis, repealed House Bill 206 dealing with the salaries to be paid the county treasurers in counties having a population of 500,000 inhabitants or more.

Therefore, the commissioners' court of Harris County may fix the salary of the county treasurer at any reasonable sum provided such salary shall not be less than \$4800.00 per annum. Att'y Gen. Op. V-1320 (1951).

Section 61 of Article XVI of the Constitution of Texas provides that all county officers in counties

having a population of 20,000 inhabitants or more shall be compensated on a salary basis and that all fees earned by such officers shall be paid into the county treasury for the account of the proper fund. In Settegast v. Harris County, 159 S.W.2d 543 (Tex. Civ. App. 1942, error ref.) the court was considering whether the county treasurer, in view of the above-mentioned constitutional provision, had the right to retain the compensation provided for in Articles 8148 and 8221, V.C.S. The court held that the compensation of the county treasurer was limited to the amount provided for in Section 19 of Art. 3912e, V.C.S. (officers' salary law) and that the compensation received pursuant to Articles 8148 and 8221 for handling funds of the Drainage and Navigation Districts could not be retained, stating at page 546:

"Under said Article 8148 it was made the duty of the treasurer of Harris County to receive and disburse the funds of said Drainage Districts, and under said Article 8221 it was made his duty to receive and disburse the Navigation District funds. There is no provision in either of said articles that the treasurer shall or may retain either the compensation from the Navigation District or the commissions from said Drainage Districts, as his personal property, and there is nothing in either article which indicates that the functions of the county treasurer in the service of these two agencies were imposed by virtue of an office separate and distinct from the office of the County Treasurer. They were, we think, additional duties required of the county treasurer of Harris County by the legislature under the rule that the legislature may require public officers to perform additional duties not inconsistent with the duties performed by them.

"The question here presented has, we think, been decided by our Supreme Court in the case of Nichols v. Galveston County, 111 Tex. 50, 228 S.W. 547. In the Nichols case, the assessor relied upon a statute which specifically authorized the payment to him of ex-officio compensation. The statute under which he claimed additional compensation in

the assessment of certain drainage taxes was a part of the statute under which appellants herein claim commissions on Drainage District funds paid to the treasurer. The court held that the assessor was required to account for the 'compensation' paid by the commissioners' court in connection with the assessment of drainage taxes and the 'commissions' on the assessment of independent school district taxes.

"This holding is strengthened, in the instant case, by the fact that Subsection (s) of said Section 19 expressly exempts Notaries Public, public weighers and county surveyors from the provisions of said Section 19. It does not except therefrom the office of county treasurer.

"Under above facts, we think that both the constitutional amendment and the legislative act under consideration definitely and specifically limited the amount of the salary which could be paid to the county treasurer and to his assistants . . ."

While the Legislature has at various times raised the maximum that may be paid the county officers (see Art. 3912g, V.C.S.), it has not changed the method of compensation and has not amended Articles 8148 and 8221. Therefore, it is our opinion that the construction placed on Article 8221 in the Settegast case is not applicable to the compensation of the county treasurer of Harris County and he is limited to the compensation provided for in House Bill 265, supra, and as fixed by the commissioners' court. You are therefore advised that the county treasurer may not retain the compensation provided for in Article 8221. We are supported in this conclusion by the fact that Article 3943c, V.C.S., applicable to county treasurers in counties having a population of not less than 145,000 inhabitants and not more than 300,000, was enacted in 1947 and provides:

". . . Where such Treasurer acts also as Treasurer of any Navigation and Drainage Districts, he is to receive and be entitled

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to retain such compensation from such Districts as is provided by Articles 8221 and 8148, Revised Civil Statutes of Texas, 1925.

We know of no similar statute applicable to Harris County which has been enacted subsequent to the Settegast case.

SUMMARY

The compensation of the county treasurer of Harris County is governed by the provisions of Section 5, H.B. 265, Acts 52nd Leg., R.S. 1951, ch. 391, p. 675 (Article 3943e, V.C.S.), which repealed House Bill 206, Acts 52nd Leg., R.S. 1951, ch. 122, p. 207 (Article 3943d, V.C.S.), and the commissioners' court is authorized to set the salary at any reasonable sum provided such salary is not less than \$4800.00 per annum. The salary of the county treasurer will be limited to the amount fixed by the commissioners' court and he is not entitled to retain compensation provided for in Article 8221, V.C.S., for receiving and disbursing funds of the navigation district. Settegast v. Harris County, 159 S.W.2d 543 (Tex. Civ. App. 1942, error ref.).

Yours very truly,

APPROVED:

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