



**THE ATTORNEY GENERAL
OF TEXAS**

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PRICE DANIEL
ATTORNEY GENERAL

AUSTIN 11, TEXAS

December 8, 1952

Hon. Darwin L. Wilder
County Attorney
Denton County
Denton, Texas

Opinion No. V-1541

Re: Legality of the county clerk's and county judge's performing the duties of a county auditor, each receiving 50% of the auditor's salary.

Dear Sir:

You have requested an opinion on the following question:

"May the duties of County Auditor be performed by the County Clerk and the County Judge, and their services compensated by each receiving 50% of the Auditor's salary?"

Public officers possess only such powers as are expressly conferred upon them by law or are necessarily implied from the powers so conferred. Anderson v. Houchins, 89 S.W.2d 1029 (Tex.Civ.App. 1936); Bryan v. Sundberg, 5 Tex. 418 (1849). In some instances a public officer is authorized and required to perform the duties of another office. 34 Tex. Jur. 447, Public Officers, Sec. 70. However, we have been unable to find any provision in the Constitution or statutes authorizing either the county clerk or the county judge to perform the duties of the county auditor. The powers and duties of the county auditor are prescribed in Articles 1645 through 1676b, Title 34 of Vernon's Civil Statutes. The general duties of the county auditor are to examine accounts and reports of various county and district officers to see that constitutional and statutory provisions governing county finance have been complied with. These duties are required to be performed by the county auditor and cannot be assigned to another person. See Navarro County v. Tullos, 237 S.W. 982 (Tex.Civ.App. 1922, error ref.).

On the question concerning the authority of one person to hold the offices of county auditor and county judge or county auditor and county clerk, Section 40 of Article XVI of the Constitution of Texas prohibits

a person from holding or exercising at the same time more than one civil office of emolument with exceptions not applicable to your request. Fruitt v. Glen Rose Independent School Dist., 126 Tex. 45, 84 S.W.2d 1004 (1935).

You are therefore advised that the duties of the county auditor cannot be performed by the county clerk or the county judge.

SUMMARY

The duties of the county auditor cannot be performed by the county clerk or the county judge.

Yours very truly,

APPROVED:

J. C. Davis, Jr.
County Affairs Division

Mary K. Wall
Reviewing Assistant

Charles D. Mathews
First Assistant

JR:am

PRICE DANIEL
Attorney General

By *John Reeves*
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