



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

November 30, 1959

Honorable Bill Thomas  
County Attorney  
Taylor County Courthouse  
Abilene, Texas

Opinion No. WW-750

Re: Whether the Commissioners' Court of Taylor County has the right of election between the employment of an Assistant District Attorney under Article 326h or Article 326k-39, Vernon's Civil Statutes.

Dear Mr. Miles:

You have requested the opinion of this office on the following question:

". . . whether or not the Commissioners' Court has the right of election between the employment of an Assistant District Attorney under Article 326h or Article 326k-39? . . ."

Article 326h, Vernon's Annotated Civil Statutes, provides:

"Sec. 1. In any judicial district in this State composed of more than one county and in which there is a city having an actual population of 50,000 inhabitants or more, the district attorney shall have authority, with the approval of the commissioners' court of such county in which said city is situated, to appoint not more than two assistants, who shall be licensed to practice law in this State, and shall perform such duties as shall be required of them by the district attorney and under the direction of the district attorney shall have all the authority that may be exercised by the district attorney. The district attorney shall use one of said assistants as an investigator to assist in the performance of the duties of his office, in addition to whatever other duties may be required of such assistant. Said assistants

shall take the constitutional oath of office and serve at the will of the district attorney, not to exceed under any one appointment the maximum time fixed by the Constitution for such officers.

"Sec. 2. The salary of each of said assistants shall not exceed three thousand dollars (\$3,000.00) per year, to be paid by the county in which said city is situated by warrant drawn on the general fund thereof, all salaries payable monthly. The district attorney shall ascertain the population of any city in his district necessary to be ascertained under this Act by making application to the mayor of any such city for a certificate as to the population of such city. It shall be the duty of any such mayor to ascertain by some reasonable accurate estimate the population of any such city, and his certificate to same under oath shall authorize the district attorney to assume its correctness and act upon the information contained in such certificate in making any appointment of an assistant or assistants under this Act."

In the absence of a certificate from the Mayor of Abilene as to the actual population of that city, we will use the Texas Almanac. According to the 1958-59 Edition, the 1957 estimated population of Abilene, Texas, the county seat of Taylor County, was 65,000. Taylor County is located in the 42nd and 104th Judicial Districts. The 42nd Judicial District is composed of Taylor, Callahan and Shackelford Counties, and the 104th District is composed of Taylor, Jones and Fisher Counties.

Under these facts, it would seem apparent that Abilene and Taylor County would come under the above statute. However, Article 326k-39, passed in 1957, provides:

"Section 1. The district attorney for the 42nd Judicial District and the district attorney of the 104th Judicial District, with the consent of the district judges of the 42nd Judicial District and the 104th Judicial District, respectively, and of the Commissioners Courts in each of the counties comprising the 42nd and 104th Judicial Districts, are hereby authorized to appoint an assistant district attorney for the district attorneys of such districts.

"Sec. 2. The assistant district attorney provided for in this Act must be duly and legally licensed to practice law in this State. The assistant may be required to give bond.

"Sec. 3. The assistant provided for in this Act shall receive a salary of not less than Three Thousand Dollars (\$3,000) nor more than Four Thousand Dollars (\$4,000) per annum, said salary to be fixed by the district attorneys of the districts and approved by the district judges of the 42nd and 104th Judicial Districts and by the Commissioners Court of each of the counties comprising the 42nd and 104th Judicial Districts. In addition to his salary, the assistant shall be allowed the actual and necessary expenses incurred in the proper discharge of his duties, never to exceed Eleven Hundred Dollars (\$1,100) per annum.

"Sec. 4. The salary and expenses of the assistant district attorney provided for in this Act shall be paid out of the general funds of the counties, prorated according to the population of the counties composing the judicial districts."

As this Statute sets out, it is a specific Article dealing with the 42nd and 104th Judicial Districts only. Both Articles 326h and 326k-39 have as principal subject matter Assistant District Attorneys; 326h being a general statute and 326k-39 being a specific statute. A comparison of Article 326h and 326k-39 reveals various conflicts between the two. Some of these conflicts are:

(1) Number of Assistants. Under Article 326h, it is possible to have four (4) assistants in Taylor County, while 326k-39 limits the number to one (1) who will serve as assistant to both District Attorneys.

(2) Method of appointing. Under 326h, only the Commissioners' Court of the County in which a city of a population of 50,000 or more shall give approval, while 326k-39 provides that all Commissioners' Courts in each of the counties comprising the 42nd and 104th Districts must give approval. Also, 326k-39 provides that the district judges of the two judicial districts must give their consent while 326h is silent on this matter.

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(3) Salaries. Article 326h provides a salary not to exceed \$3,000 per year for each assistant to be paid by the county in which the city of 50,000 population is located, while 326k-39 provides for a salary of not less than \$3,000 nor more than \$4,000 per year which shall be paid by the various counties in the districts prorated according to population.

On the effect of a specific act conflicting with a prior general act, one authority states:

"This rule of construction has found frequent and apt illustration where one of the supposedly conflicting statutes was general in its terms and the other specific. In such a case it is universally held that the specific statute more clearly evidences the intention of the Legislature than the general one, and therefore that it will control. In such a case, both statutes are permitted to stand--the general one applicable to all cases except the particular one embraced in the specific statute. . . ." (Townsend v. Terrell, 118 Tex. 463, 16 S.W.2d 1063 (1929)).

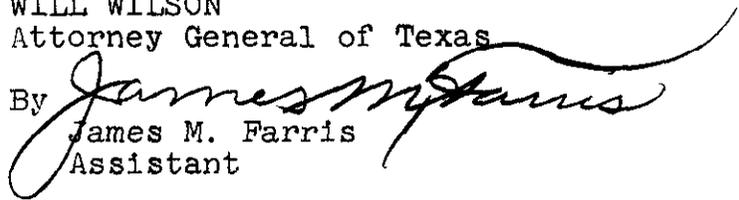
Thus, it is our opinion that this is the proper rule of construction that should be applied here. It is also important to note that Article 326k-39 was passed thirty years after Article 326h, and certainly shows more clearly the legislative intent in this regard in the 42nd and 104th Judicial Districts.

#### SUMMARY

The Commissioners' Court of Taylor County does not have the right of election between employment of an Assistant District Attorney under Article 326h or Article 326k-39. The District Attorneys must hire the assistant with the consent of the Commissioners' Court and the District Judges under Article 326k-39.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
James M. Farris  
Assistant

JMF:mfh

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APPROVED:

OPINION COMMITTEE  
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