



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

November 13, 1962

Honorable Doug Crouch
District Attorney
Tarrant County
Fort Worth, Texas

Opinion No. WW-1469

Re: Whether a fee paid to a deputy county clerk for signing an inventory and appraisement in a probate matter, as an appraiser, is a fee of office that must be paid into the county treasury as a fee of office.

Dear Mr. Crouch:

You have requested an opinion from this office in regard to the question of whether:

" . . . the fee paid to the deputy clerk for signing an inventory and appraisement as an appraiser in probate matters a fee of office such as must be paid into the county treasury and accounted for as a fee of office?"

You have mentioned in connection with the above-quoted question that:

"Here in Tarrant County as in many other counties in the state, the practice has developed over quite a period of time whereby in probate matters, attorneys will take into the office of the county clerk an inventory and appraisement to be filed in connection with the probate proceedings. The attorney will then ask one or more deputy clerks to sign the inventory and appraisement for them before it is filed. This is done, I am sure, as a matter of convenience to the attorneys. For signing these instruments the deputy clerk is usually paid some fee, and I am informed this fee is usually about \$10.00 each."

Article XVI, Section 61, of the Texas Constitution, provides in part that:

"All district officers in the State of Texas and all county officers in counties having a population of twenty thousand (20,000) or more, according to the then last preceding Federal Census, shall be

compensated on a salary basis . . . All fees earned by . . . county . . . officers shall be paid into the county treasury. . . ."

In State v. Glass, 167 S.W.2d 296 (Civ. App. 1943, error ref., State v. Glass, 141 Tex. 83, 170 S.W.2d 470), it was held in Section 61 of Article XVI of the Texas Constitution that:

". . . all fees earned by district, county and precinct officers shall be paid into the county treasury . . . indicates an intention that all fees of every character collected by a county officer officially in counties having a population of twenty thousand or more shall become fees of office, and that the officer is limited to his salary as compensation, and any fees collected by him officially must be paid into the county depository as directed by the constitutional provision." (Emphasis added)

In addition, the Supreme Court of Texas in the case of Wichita County v. Robinson, 155 Tex. 1, 276 S.W.2d 509, in commenting upon State v. Glass, supra, states that:

". . . Section 61 of Article XVI, Constitution of Texas, required that the collection be limited to his salary as compensation and any fees collected by him officially paid into the County Depository. . . ." (Emphasis added)

The language of the courts in the cases cited above makes it readily apparent that the fees or compensation received by county officers to which Section 61 of Article XVI of the Texas Constitution applies are those fees which are received by the county officer in his capacity as a county officer and which are considered a fee of the county office which he holds. Such being the case, it is necessary to determine in the instant case whether the fee received by the deputy county clerk for signing an inventory and appraisal as an appraiser in a probate matter is a fee of the county office he holds or is merely remuneration which he has received in a capacity other than in his official capacity as a county officer.

Section 248 of the Probate Code, Vernon's Civil Statutes, provides that:

"When letters testamentary, or of administration or guardianship, are granted, the court, in the

order granting such letters, shall appoint three or more disinterested persons, citizens of the county, a majority of whom may act, to appraise the property of the estate to be administered. . . ." (Emphasis added)

Section 250 of the Probate Code, Vernon's Civil Statutes, provides that:

"It shall be the duty of every personal representative of an estate, as soon as he has collected the estate, and within sixty days after he has qualified and received letters, with the assistance of a majority of the appraisers appointed by the court, to make or cause to be made a full and correct inventory and appraisement of the property . . . and such appraisement shall be duly sworn to and subscribed by the appraisers."

Section 253 of the Probate Code, Vernon's Civil Statutes, provides that:

"Each appraiser appointed by the court, as herein authorized, shall be entitled to receive a minimum compensation of Five Dollars (\$5) per day, payable out of the estate, for each day that he actually serves in performance of his duties as such."

A study of the above-quoted provisions of the Probate Code reveals that the court may appoint as an appraiser in a probate matter any disinterested person who is a citizen of the county. There is no requirement that any of the appraisers appointed by the court be a deputy county clerk. In turn, there is no requirement set forth by statute that the County Clerk or any of his deputies serve as appraisers in probate matters.

The fees earned or collected by deputy county clerks which must be paid into the county treasury pursuant to Section 61 of Article XVI of the Texas Constitution are those fees earned or collected by the deputy county clerks in their official capacity as deputy county clerks and in performing their functions as deputy county clerks. As there are no statutory requirements placed upon a deputy county clerk, in carrying out his official functions, to act as an appraiser in probate matters; and as the duties of an appraiser in probate matters can be fulfilled by any disinterested person who is a citizen of the county, we are of the opinion that any remuneration paid to a deputy county clerk by virtue of his having been appointed an appraiser in a probate

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matter is not a fee of office as contemplated by Section 61 of Article XVI of the Texas Constitution, and it would not be necessary for such compensation received by a deputy county clerk to be paid into the county treasury.

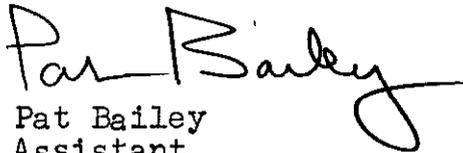
SUMMARY

Remuneration received by a deputy county clerk in acting as an appraiser in a probate matter is not a fee of office as contemplated by Section 61 of Article XVI of the Texas Constitution and would not have to be paid into the county treasury.

Yours very truly,

WILL WILSON
Attorney General of Texas

By


Pat Bailey
Assistant

PB:wb

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman
Frank Booth
Sam Stone
Paul Phy
L. P. Lollar

REVIEWED FOR THE ATTORNEY GENERAL

BY: Leonard Passmore