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MONTHLY REPORT
 OF THE
ATTORNEY GENERAL
 OF THE
STATE OF TEXAS



GERALD C. MANN
ATTORNEY GENERAL

VOLUME 1, NUMBER 3

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APRIL, 1939

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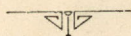
GERALD C. MANN
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ATTORNEY GENERAL
MONTHLY REPORT FOR
APRIL, 1939



OPINIONS RENDERED

April 1, 1939

To

April 30, 1939

0-570 To: Leland M. Johnson, Chairman, Subcommittee
on State Affairs, House of Representatives
Date: April 8, 1939

House Bill No. 960, providing for the payment out of the Texas Old Age Assistance Fund of the burial expenses of persons who had been on the Texas Old Age Assistance rolls is unconstitutional as being a grant of public moneys and is not authorized by Article III, Section 51b, of the Constitution.

House Bill No. 960 is unconstitutional because its title does not give reasonable notice of the subject of the bill, as required by Article III, Section 35 of the Constitution.

House Bill No. 960 is unconstitutional because it constitutes a diversion of a special fund in violation of Article VIII, Section 7, of the State Constitution.

0-563 To: House of Representatives, 46th Legislature,
Austin.
Date: April 11, 1939

Proposed S. B. 75, regulating travel bureaus, is unconstitutional, assuming similar facts as in *Ex parte Martin*, 74 S. W. (2d) 1017; *Ex parte Talkington*, 104 S. W. (2d) 495; and *Martin, et al. v. Railroad Commission, et al.*, 106 S. W. (2d) 653, in that it is violative of the Fourteenth Amendment to the Constitution of the United States and Section 19 of Article I, Constitution of Texas, and is void because certain portions are uncertain, ambiguous and vague. Its penal provisions fail to provide for notice, and proper limitations are not placed on the authority of the commission to promulgate rules.

0-469 To: Karl Cayton, County Attorney, Dawson County
Date: April 3, 1939

When a conviction is had in the justice court and only a part of the costs are collected, that sum should be prorated between the officers and the county in the same proportion as each would have been entitled to receive therefrom had all costs been collected. Article 949, C. C. P., et al.

0-502 To: J. P. Bryan, County Attorney, Brazoria County
Date: April 7, 1939

The attempted consolidation of Anchor Common School District and Angleton Independent School District by the County School Board of Brazoria County was an absolute nullity by reason of a failure to comply with the conditions and procedure required by Article 2806, R. C. S. as amended.

Articles 2742i, 2742j, 2742k, 2815g-2, 2815g-3, 2815g-8, R. C.

S., do not by express language attempt to validate a consolidation of school districts, and since each of these acts provides for the validation of an attempted consolidation by the "proper officers," the acts will not serve to validate the attempted consolidation of Angleton Independent School District with Anchor Common School District by the County School Board of Brazoria County.

The attempted consolidation of Anchor Common School District with Angleton Independent School District was void and ineffective and has not been validated by any curative legislation upon the statute books. Articles 2744a, 2744c, 2815g-7, 2815g-12, 2815g-13, 2806a, R. C. S.

0-594 To: B. J. Stewart, County Attorney, Real County
Date: April 10, 1939

A justice of the peace under Article 1052, C. C. P. is not entitled to trial fees in cases filed by complaint but dismissed by motion of the county attorney. In order to entitle the justice of the peace to trial fees the case must actually have been tried and finally disposed of before him.

0-226 To: Virgil A. Fielden, Chairman, Committee on
Claims and Accounts, House of Representatives
Date: April 5, 1939

This opinion and supplemental opinion pass on the validity of thirteen claims presented to the Legislature. Article 3, Section 44, Constitution. *Austin National Bank v. Sheppard*, 71 S. W. (2d) 243; *Corsicana Cotton Mills v. Sheppard*, 71 S. W. (2d) 247; *State v. Perlstein*, 79 S. W. (2d) 143. Article 7057b, 4769, as amended, 4770, 4775, 4776, 5068(c), 4902, 7064, R. C. S.

0-491 To: T. M. Trimble, First Assistant State Superintendent, Department of Education.
Date: April 10, 1939

Taylor Common School District in Bandera County was consolidated with Utopia Independent School District in Uvalde County, the name of the consolidated district being Utopia Independent School District, the date of the consolidation being in 1936. The consolidated district voted to assume the bond issue outstanding against Taylor Common School District. The tax collector of Bandera County collects the taxes in that county for the independent school district and the tax collector of Uvalde County performs like duties in said county for the district. The consolidated district has designated the Sabinal State Bank as the depository. The tax collector of Bandera County should deliver all taxes collected by him in behalf of the school district to Sabinal State Bank, the depository of the independent school

district and some of said funds having been deposited in the First National Bank of Bandera, which is the depository of Bandera County, such funds should be transferred from the Bandera Bank to the Sabinal State Bank. Articles 2806, 2791, 2792, and 2832, R. C. S.

0-481 To: Weaver H. Baker, District Attorney, Junction
Date: April 6, 1939

The statutes impose no duty upon the district attorney to assist the county attorney in condemnation proceedings initiated by the commissioners' court for the purpose of obtaining a right-of-way for a public road or in defense of a lawsuit by a land owner against the county in such condemnation proceedings.

The commissioners' court may contract with the district attorney in condemnation proceedings and provide for his compensation in such contract.

0-582 To: Gilbert Smith, County Attorney, Jones County
Date: April 6, 1939

A citizen of Anson can hold both the offices of mayor and justice of the peace of Jones County at the same time, these two offices not being incompatible ones and the office of justice of the peace being excepted from Article 16, Section 40, Constitution. *Luera v. State*, 63 S. W. (2d) 699.

0-531 To: Tom L. Beauchamp, Secretary of State
Date: April 7, 1939

H. B. 228, which provides that certain cities shall have power to fund by ordinance enacted by the governing body the whole or any part of any legal debt of said city, which debt is the difference between the wages paid or to be paid the firemen and the policemen by the terms of S. B. 89 passed and approved the 19th day of April, 1937, presents a serious question as to whether an election should be first held.

0-545 To: Geo. H. Sheppard, Comptroller of Public Accounts
Date: April 4, 1939

The word "cement" as used in Section 41a of Article 7047 of Vernon's Ann. R. C. S. means cement as that term is commonly used and understood, and "Trinity-Mix," under the facts set out, is cement and subject to the cement tax.

0-577 To: Dwight Whitwell, Assistant County Attorney,
Collin County
Date: April 10, 1939

Actual occupancy of premises claimed to be homestead is not an absolute essential in every instance in order to claim the home-

stead exemption from State taxes. Article VIII, Section 1a, Constitution of Texas. Hence affidavits (on forms furnished by the Comptroller) that the owner has occupied or is occupying the premises may in some instances be dispensed with. Vacant property may be impressed with the homestead character when the head of the family having another homestead has a definite intention in good faith of occupying the same as such, and is manifesting such intention with actual preparatory acts in connection with the property such as to clearly show such intention, the good faith and the reality thereof.

0-375 To: Robert F. Cherry, County Attorney, Bosque
County
Date: April 8, 1939

A county board of school trustees is not authorized arbitrarily to apportion common school district local taxes covering a period of years recovered from a tax collector, on the basis of the assessor's valuation for any one year. Articles 2795, 2828, R. C. S.

0-737 To: Bert Ford, Administrator, Texas Liquor Control
Board
Date: April 7, 1939

A pharmacy, under the definition of the statute, is not a bona fide pharmacy unless it is registered with the State Board of Pharmacy and unless it has at all times a registered pharmacist. Consequently, a drug store operated by a licensed physician but not registered with the State Board of Pharmacy under the provisions of Section 18 of Article 666, P. C., is not a bona fide pharmacy within the meaning of the Texas Liquor Control Act.

0-346 To: Wm. B. Martin, Assistant District Attorney,
Hillsboro
Date: April 6, 1939

A county cannot collect ad valorem taxes on trucks that pass through the county, stopping only to load or unload freight, if those trucks are owned by a person or a corporation whose domicile is in another county. *City of Fort Worth v. Southland Greyhound Lines, Inc.*, 67 S. W. (2d) 354, approved by Supreme Court, 123 Texas 13, 67 S. W. (2d) 361.

0-556 To: Allen C. Wilson, County Attorney, Kendall
County
Date: April 6, 1939

A county commissioner employing his nephew to work for the county would be a violation of Article 432, P. C., and it would also be a violation for a commissioner to employ anyone related within the prohibited degree to another member of the

commissioners' court. Likewise, it is a violation for a commissioner to employ such a relative to repair machinery for the county, when the labor is paid for by an appropriation by the commissioners' court.

0-562 To: A. M. Pribble, County Attorney, Mills County
Date: April 3, 1939

A contract for teaching entered into between a teacher and the board of trustees of a common school district not approved by the county superintendent prior to the common school district's consolidation with an independent school district has no legal significance, and vitality cannot now be given it by approval by the county superintendent.

0-418 To: Charles S. McMillan, County Attorney, San Augustine County
Date: April 6, 1939

Article 7336f, Vernon's R. C. S., barring the collection of certain delinquent taxes, does not bar the collection of judgments, even though the judgments were for taxes due prior to 1919; and the statutes of limitation do not run against a judgment in favor of the state. Article 5532, R. C. S.

0-264 To: Geo. H. Sheppard, Comptroller of Public Accounts
Date: March 24, 1939

Restaurants, cafes and eating houses do not fall within the statutory definition of "store" or "mercantile establishment" embodied in Section 7 of the Chain Store Tax Law so as to be subject to the license tax levied on such stores. H. B. 18, Chapter 400, Acts 44th Leg., 1st C. S.

0-590 To: W. A. Little, Director, Texas Old Age Assistance Commission
Date: April 7, 1939

Warrants issued by the Old Age Assistance Commission under H. B. 37, Acts 44th Leg. and those issued under H. B. 179, Acts 46th Leg., are valid obligations payable as they mature under the schedule in H. B. 179, out of the revenues of the Old Age Assistance Fund in priority to concurrent benefit payments, but said warrants do not constitute general obligations of the State.

0-526 To: R. S. Wyche, County Auditor, Gregg County
Date: April 1, 1939

Script cannot issue against the State of Texas to pay the per diem and mileage fees for witnesses who are summoned in proceedings in the district court to determine the question of a

defendant's insanity after conviction. Articles 921, 922, 924, C. C. P. Article 1036, C. C. P., has no application.

0-506 To: Joe J. Fisher, District Attorney, San Augustine County
Date: April 3, 1939

The board of trustees of consolidated common school districts have authority to contract with a superintendent on a twelve months' basis. Article 2809 governs and Article 2781, R. C. S., has no application.

Even if Article 2781, R. C. S., providing the beginning and termination dates of twelve months' contracts with superintendents were applicable to consolidated common school districts, a superintendent would not be precluded from recovering on a twelve months' contract, notwithstanding the beginning date is fixed at a date other than July 1st. *Smith v. Martin I. S. D.*, 85 S. W. (2d) 853.

0-552 To: E. H. Thornton, Jr., Chairman, Appropriations Committee, House of Representatives
Date: April 17, 1939

The biennial appropriation for the Public Safety Department could not be made out of the State Highway Fund by a rider attached to the general appropriation bill. Article III, Section 35, Constitution; Articles 6673 and 6674q-6, R. C. S.

0-630 To: L. A. Woods, State Superintendent of Public Instruction
Date: April 14, 1939

Such repugnancy does not exist between Article 7043 and S. B. 117, both pertaining to per capita apportionment, as would lead to the conclusion that the latter bill repeals by implication the \$17.50 provision of Article 7043. Nor would the addition of the clause, "all laws and parts of laws in conflict with the provisions of the act are hereby repealed," to S. B. 117 have such an effect under the rule announced by the Texas Supreme Court in *Gaddis v. Terrell*, 110 S. W. 429. S. B. 117 would have to refer specifically to the provision intended to be repealed in order to effectuate such a purpose.

0-99 To: W. L. Edwards, County Attorney, Victoria County
Date: April 4, 1939

In a consolidated common school trustee election in which three candidates each received 32 votes and a fourth received 31 votes, one of the candidates receiving 32 votes cannot withdraw in favor of the other two who received the same number, but a new election must be held for selecting the two trustees. Articles 2923 and 2953, R. C. S.

0-497 To: T. H. Neel, County Attorney, Ward County
Date: April 3, 1939

The city officers named in Article 977, R. C. S. 1925, whose offices have not been dispensed with as provided therein, should be elected by the qualified electors and in the event no qualified person is nominated or elected, a vacancy will be declared and the same filled by appointment by the mayor to be confirmed by the city council. Article 989, R. C. S.

0-540 To: A. E. Hickerson, County Auditor, Montgomery County
Date: April 6, 1939

It is the duty of the district clerk to collect the interest provided for in a compromise judgment for delinquent taxes before releases can properly be issued by him.

0-374 To: Wm. B. Martin, Assistant Criminal District Attorney, Hillsboro
Date: April 5, 1939

The question of whether or not an applicant meets the qualifications for county auditor as provided by Article 1648, R. C. S., is one of fact and, since the authority to appoint is in the county judge, that officer should determine whether or not the applicant is qualified.

0-558 To: John Stapleton, County Attorney, Floyd County
Date: April 6, 1939

An order of the commissioners' court in substantially the same terms as Article 1055, C. C. P., as amended, providing for half fees to county officers in certain cases, is invalid, such amended article having been held unconstitutional by this department in Opinion 0-23 rendered January 11, 1939. Moreover, the commissioners' court is not a law making body, but an administrative and quasi-judicial body.

0-567 To: Murphy Cole, County Auditor, Liberty County
Date: April 5, 1939

Excess money paid by the purchaser of land sold for taxes after the judgment is paid in full should be paid by the sheriff to the clerk of the court out of which execution or other final process issued to be retained by him, subject to the order of the court for a period of two years, unless otherwise ordered by the court, after which time the court may order the same to be paid to the owner against whom said taxes were assessed; then after the expiration of two years anyone claiming the balance shall make proof of his claim to the satisfaction of the State Treasurer within three years after the sale of the land;

and, if no satisfactory claim is made to the State Treasurer within three years, this money will escheat to the State of Texas. Article 7328, R. C. S.

0-427 To: A. M. Harrison, Assistant County Attorney,
Lamar County
Date: April 4, 1939

The city of Paris, which operates under a special charter allowing it to prescribe the duties of the city attorney and fix his compensation, has the right to make a contract with the city attorney to collect delinquent taxes and pay him a per cent of the total amount collected. The city also has the right, by virtue of its power to levy taxes, to file suit for delinquent taxes without the council first passing an ordinance providing for the filing of suits.

0-471 To: T. O. Walton, President, Agricultural and Me-
chanical College
Date: April 3, 1939

Notaries public who are employed by the Agricultural and Mechanical College of Texas cannot legally refuse to do notary work during office hours. There is, however, no duty imposed upon a notary, or any other public officer, to execute a particular duty at any given moment. He may execute that duty at such reasonable time as is consistent with the other duties imposed upon him by reason of his particular employment.

0-612 To: Pat Beadle, Criminal District Attorney, Clarks-
ville
Date: April 8, 1939

No poll tax can be legally levied by the city council except by consent of two-thirds of the aldermen elected and the ordinance of the city of Clarksville attempting to levy a city poll tax is invalid and of no legal effect, unless such tax was levied by consent of two-thirds of the aldermen elected.

0-508 To: E. H. Griffin, County Attorney, Young County
Date: April 6, 1939

Article 7005, R. C. S., exempting certain counties from laws regulating the inspection of hides and animals, suspends the operation of Article 1455, P. C., and that portion of Article 1452 of the Penal Code which reads "or shall fail to have the hide and ears of such animal or animals inspected by the inspector or some magistrate within twenty days after such animal is slaughtered," as to Young County.

0-44 To: Geo. H. Sheppard, Comptroller of Public Accounts
Date: April 11, 1939

The Comptroller's Department may not withdraw money from the general revenue fund and place it in the suspense fund in order to rectify a previous bookkeeping error, or for any other reason, except upon specific direction by the Legislature. Article VIII, Section 6, Constitution of Texas. *Manion v. Lockhart*, 114 S. W. (2d) 216.

0-523 (Conference Opinion 3044)
To: Bascom Giles, Commissioner, General Land Office
Date: March 29, 1939

Article 5344, 1925, R. C. S., being Section 83 of Chapter 140, Acts of 1925, requires \$2.00 per acre annual rental payments throughout the life of oil and gas leases on river bed area notwithstanding production has been secured.

Section 10 of Article 5421c, being Chapter 271, Acts of 1931, construed as not to apply to or include oil and gas leases on river bed areas; if Section 10 of Article 5421c is construed to apply to or include oil and gas leases on river bed areas, it is unconstitutional as being in violation of Article III, Section 35 of the Constitution of Texas. See also 0-669.

0-551 To: E. H. Thornton, Jr., Chairman, Appropriations
Committee
Date: April 15, 1939

The Legislature is prevented by Section 14 of Article VII of the Constitution of Texas from making appropriations out of the general revenue fund for the purpose of building buildings and equipping same with permanent fixtures at Texas Agricultural and Mechanical College, assuming that said college is a part of the University of Texas. However, the Legislature would not be prevented from appropriating money out of the general revenue fund for the purpose of equipping said buildings insofar as such equipment does not constitute permanent fixtures.

0-614 To: M. F. Kieke, County Attorney, Lee County
Date: April 12, 1939

Six months previous residence in a school district is not a necessary prerequisite to voting in a common school district trustee election. *Little v. State*, 12 S. W. 966; *Warren v. Robinson*, 32 S. W. (2d) 871; Article 2955, R. C. S.; and Article VI, Section 2, Constitution of Texas.

0-609 To: A. J. Luckett, County Attorney, Comal County
Date: April 12, 1939

A person transporting laborers from Texas to Ohio on isolated occasions under a contract whereby he receives a certain amount per head for furnishing such laborers in Ohio, and in that manner receives some compensation for transporting them, does not violate Article 1690, P. C., although he has no certificate or permit as a carrier under Article 911a, R. C. S. *Hoffman v. State*, 20 S. W. (2d) 1057; *Commercial Credit Co. v. Grose-close*, 66 S. W. (2d) 709.

0-569 To: E. Y. Cunningham, County Auditor, Navarro County
Date: April 12, 1939

The statutes do not make any provisions by which out-of-county witnesses may be recognized, subpoenaed or attached in misdemeanor cases in the county courts, nor do the statutes provide for the compensation of out-of-county witnesses in such cases. Articles 475, 1036, 1078, C. C. P.

0-559 To: W N. Darst, County Auditor, Fort Bend County
Date: April 8, 1939

Under the facts here presented interest payments on county funds, allowed by the court after the bankruptcy of the county depository, should be paid into the jury fund or such other funds as the commissioners' court may direct, Article 2442, R. C. S., 1911, being applicable.

0-470 To: T. O. Walton, President, Texas Agricultural & Mechanical College
Date: April 13, 1939

Persons employed by A. & M. College whose duties include operating college-owned trucks should obtain "chauffeurs" licenses. Article 6687a, R. C. S., as amended.

0-623 To: H. A. Hodges, County Auditor, Williamson County
Date: April 15, 1939

Expenses of holding an election to consolidate common school districts, with the exception of compensation to the election officers, should be paid out of the available maintenance funds of the several districts as provided by Article 2746b, R. C. S., as amended. See also Opinion 0-100.

0-314 To: N. J. Dartez, Secretary, State Board of Barber Examiners
Date: February 24, 1939

An ordinance of the City of Midland, Texas, regulating the issuance of health certificates and requiring persons "required

by law to have on exhibit a health certificate' to undergo the Wasserman blood test does not require barbers to undergo such test in order to be permitted to work in that city. Articles 705c and 734a, Penal Code.

0-310 To: Stanley Timmins, County Attorney, Harrison County
Date: April 15, 1939

The county auditor does not have authority to institute a suit for the benefit of the county to recover money paid out under a void contract, notwithstanding the refusal of the commissioners' court and the county treasurer to bring the action.

0-593 To: T. M. Trimble, First Assistant State Superintendent
Date: April 13, 1939

Section 4, Chapter 146, Special Laws, Regular Session, 33rd Leg., resting the control and management of Kyle I. S. D. in a board of three trustees still governs and the present control and management of such school district by a board of seven trustees (presumably under Article 2775) is not authorized by the statutes of Texas. Article VII, Section 3, Constitution of Texas. *Smith v. Morton I. S. D.*, 85 S. W. (2d) 853.

0-449 To: Charles R. Martin County Auditor, Harrison County
Date: April 8, 1939

The procedure followed by the State Comptroller in allocating the Legislative appropriation to the county officers' salary fund for county attorneys performing the duties of district attorneys and criminal district attorneys is legally correct. Article 3912e, V. A. C. S.

0-632 To: E. H. Thornton, Jr., Chairman, Appropriations Committee, House of Representatives
Date: April 14, 1939

If the authority to contract for the erection of a building by an institution of higher learning has not been conferred by some pre-existing valid law, officers of the state contracting for the erection of such building would be acting in excess of their authority and the contract under such circumstances would not constitute a legal and valid obligation against the State. Article III, Section 44, Constitution of Texas.

The act of the Governor in approving the issuance of a deficiency warrant in payment of such contract could not render the contract valid, and the Legislature is without authority

to appropriate money in payment of such deficiency warrant. Article III, Section 49, Constitution of Texas.

The governor does not have authority to approve deficiency warrants in excess of \$200,000.00. Article 4351, R. C. S., 1925; Article III, Section 49, Constitution of Texas.

0-639 To: W. Lee O'Daniel, Governor of Texas
Date: April 17, 1939

H. B. 194, popularly known as the "Barber's Bill," is unconstitutional in that it confers an unbridled and arbitrary discretion on the State Board of Barber Examiners in allowing it to approve or disapprove agreements fixing prices submitted by the barbers of any particular county of the State; no standard is laid down; no finding of facts is required of the Board; and the Board is given power to create arbitrary and unreasonable classifications. Section 3, Article I, Constitution of Texas.

0-603 To: W. A. Davis, State Registrar, Board of Health
Date: April 13, 1939

Persons wishing to secure a death certificate should submit it to the physician last in attendance before death for execution, unless the circumstances surrounding the death were such as to require that an inquest be held by the justice of the peace within Article 968, C. C. P. In that event, the death certificate should be submitted to the justice of the peace for execution. Rules 40a and 41a of Article 4477. See also Opinion 0-231.

0-405 To: W. H. Cousins, Secretary, Texas Board of Pharmacy, Dallas
Date: April 13, 1939

The duty of enforcing the Medical Practice Act, H. B. 148, 46th Leg., as the same relates to the sale of prophylactics and contraceptives for the cure of disease, by physicians and licensed pharmacists rests with the State Board of Medical Examiners.

0-631 To: Claude A. Williams, Assistant Secretary of State
Date: April 19, 1939

If an application for charter of a proposed corporation is legal upon its face, and states a purpose authorized by law, the Secretary of State has no right to inquire into the motives of the incorporators. However, if the purpose clause does not reveal sufficient facts to determine the real purpose or if there is any question as to the purpose clause coming within the purview of the statutes, or if the purpose clause is so written as to conceal the real purpose, the Secretary of State has the right to make such investigation as he may deem wise.

0-624 To: C. E. Alvis, Jr., County Attorney, Coryell County
Date: April 15, 1939

On December 1, 1938, an election was ordered and notices issued of an election to be held to determine whether Cottonwood C. S. D. should be consolidated with Evant I. S. D. The election was duly held and results declared in favor of consolidation. On December 7, 1938, without notice, the Hamilton County School Board entered an order annexing a part of the Cottonwood District to Star School District of Mills County and the remainder to Evant I. S. D. The order of December 7 was void and the consolidation of the Cottonwood and Evant Districts was effected.

0-611 To: I. Predecki, County Auditor, Galveston County
Date: April 17, 1939

Since proceedings for forfeiture of bail and bail bonds are not criminal but civil cases although growing out of a criminal case, the justice of the peace is not entitled to charge the county the sum of \$2.50 for the purported trial of such a proceeding in the justice court. Such proceeding is not in contemplation of Article 1052, C. C. P., providing for trial fees.

0-443 To: T. M. Trimble, First Assistant State Superintendent of Public Instruction
Date: April 14, 1939

Generally, a school district, either independent or common, in conducting the public schools is exercising a governmental power as distinguished from a proprietary function and is not liable in tort actions. The Texarkana Independent School District and its board of trustees would not be liable in damages in the instances presented.

0-604 To: T. M. Trimble, First Assistant State Superintendent of Public Instruction
Date: April 13, 1939

In the event of war, if a county superintendent who is an officer in the National Guard is called into the United States Army, (1) the office of county superintendent is automatically vacated; (2) the commissioners' court would appoint his successor; (3) the successor would serve until the next general election; (4) the county superintendent could not designate his own successor; and (5) on his return from the army he does not go back into the superintendent's office unless again elected thereto, or unless it is vacant and he is appointed.

0-620 To: G. M. Mann, County Auditor, Hill County
Date: April 13, 1939

Under Article 164, R. C. S., the commissioners' court has the

power to purchase kitchen equipment for the use of the county home demonstration agent.

0-619 To: Frank Wright, County Auditor, Fannin County
Date: April 14, 1939

Neither the Constitution of Texas nor the statutes expressly or impliedly give to members of the commissioners' court authority to install telephones in homes and charge the expense of same to the county.

0-379 To: G. G. Roane, County Attorney, Fort Bend County
Date: April 18, 1939

A justice of the peace has no authority to appoint a deputy or special constable for any other purposes than to assist in the suppression of riots, unlawful assemblies and other disturbances at elections, and such appointments must be made in strict compliance with Article 102, C. C. P.

0-606 To: Mrs. Willie O'Neal, County Auditor, Carson
County
Date: April 18, 1939

In computing words to be counted in the enumeration of fees under Article 3930, R. C. S., 1925, for recording, for translating, transcribing and verifying instruments, documents, records and papers, symbols and numbers should be counted as words. The only rule that can be laid down to follow in making such computations would be a rule of reason wherein usage, science and sentiment, as those terms are expressed in present day written or printed common parlance, would be applied.

0-391 To: Joe J. Fisher, District Attorney, San Augustine
Date: April 18, 1939

The justice of the peace is not entitled to the trial fees provided for in Article 1052, C. C. P., where there is no trial of the case before him but the same is dismissed upon the motion of the county attorney or his assistant, the criminal district attorney or his assistant, or any other attorney representing the State.

0-583 To: Hubert Forman, County Attorney, Upton County
Date: April 15, 1939

When a district or county attorney collects moneys legally due the county and illegally retained, from county officials or from their bonding company, such officers are entitled to retain commissions on such moneys as provided in Article 335, R. C. S., 1925, provided such commissions when added to other fees allowed would not exceed the annual maximum amount of compensation or fees allowed by law. Article 339, R. C. S., cited.

0-617 To: Abe M. Mays, Chairman, Local and Uncontested
Committee, House of Representatives
Date: April 18, 1939

House Bill 936, pending in the 46th Leg., R. S., which purports to validate the Civil Service status of employees of cities having 285,000 population or more, as of January 1, 1939, and which will apply likewise to employees who have been discharged since January 1, 1939, would, if enacted, be unconstitutional as violative of Article I, Section 16 and Article III, Section 53 of the Constitution of Texas.

0-588 To: Chas. T. Banister, Criminal District Attorney,
Corsicana
Date: April 14, 1939

When a county originally dry by local option subsequently legalizes the sale of 3.2% beer and then votes by a majority of votes for prohibiting the sale of beer containing alcohol not exceeding four per centum by weight in a subsequent election, a conviction under Article 666, P. C., could be sustained.

0-608 To: Pierre M. Stine, County Attorney, Clay County
Date: April 15, 1939

Where the entire enrollment of a standardized one-teacher school is transferred to another school by agreement, the teacher-salary aid under the Rural Aid Law (Section 19, Chapter 474, p. 1259, Gen. and Sp. Laws, 45th Leg.) to be received will be based on the qualifications and experience of the teacher employed by the sending district where a contract of employment had been made. If no teacher has been employed, then such aid will be extended the same as if the sending district had employed a teacher possessing the minimum qualifications for such a school.

0-599 To: Louis T. Holland, County Attorney, Montague
County
Date: April 13, 1939

There is no conflict between Articles 1052 and 1074, C. C. P.; Article 1052 sets the fees due a county judge, judge of the county court at law or justice of the peace in criminal cases tried and finally disposed of before them. Article 1074, C. C. P., however, does not deal with the question of fees to be paid to the county judge, judge of the county court at law or justice of the peace, but rather concerns costs to be charged and assessed against a defendant convicted in a criminal action.

0-573 To: W. A. (Bill) Morrison, Criminal District At-
torney, Cameron
Date: April 17, 1939

When a county seeks to hold a county-wide election to deter-

mine whether the sale of all alcoholic beverages shall be prohibited when the sale of all alcoholic beverages has been previously legalized, and there are both wet and dry precincts, the words "for prohibiting the sale of all alcoholic beverages" and "against prohibiting the sale of all alcoholic beverages" should be printed on the ballot.

0-610 To: Tom F. Coleman, Jr., County Attorney, Angelina County
Date: April 18, 1939

Articles 2943 and 2996, R. C. S., are controlling and the County of Angelina may legally pay all proper expenses incurred in the special election held under the authority of Articles 1133 and 1134, R. C. S., 1925, for the incorporation of the City of Huntington.

0-587 To: John C. Marburger, County Attorney, Fayette County
Date: April 19, 1939

An electric cooperative corporation organized under Article 1528-b, R. C. S., Acts 1937, 45th Leg., p. 161, Ch. 86, is subject to taxation by the State, county, city, school district, or any other political subdivision. The specific exemptions of Article VIII, Section 2, Article XI, Section 9 of the Texas Constitution, and Article 7150, R. C. S., do not apply to such a corporation.

0-580 To: Tom Seay, County Attorney, Potter County
Date: April 14, 1939

Linemen, troublemen, meter readers, meter testers, a collector, a local manager, an engineer, mechanic, department head, and power salesmen, who are employees of a gas utility company operating company-owned motor vehicles in the course of the performance of their duties, are "chauffeurs" within the scope of the definition contained in the Driver's License Law, Article 6687a, Section 1(g), V. A. C. S., as amended, and they are required under the law to obtain chauffeur's licenses. See also 0-03, 0-146, and 0-470.

0-574 To: T. M. Trimble, First Assistant State Superintendent of Public Instruction
Date: April 13, 1939

The petitions submitted for inspection are insufficient to call an election to dissolve a consolidated school district or divide and attach its territory to other districts. Articles 2806, 2815, 2742b, Section 5a, and 2742f, R. C. S., 1925.

0-605 To: Claude A. Williams, Assistant Secretary of State
Date: April 19, 1939

The statutes of this state do not authorize the incorporation of soil and water conservation associations for the purposes set forth in the proposed articles of incorporation submitted. Article 5740, R. C. S., is not applicable.

0-597 To: John Stapleton, County Attorney, Floyd County
Date: April 13, 1939

The County Treasurer of Floyd County cannot deduct the premium paid on her surety bond from excess fees of her office. Articles 3891, 3899, and 3899, Sec. b, R. C. S. Moreover, it is necessary for the County Treasurer of Floyd County to make the annual report required by Article 3897, R. C. S.

0-576 To: Geo. H. Sheppard, Comptroller of Public Accounts
Date: April 12, 1939

Chapter 41, Gen. and Special Laws, 2nd C. S., 42nd Leg., (purporting to amend Section 15, Article 7047, R. C. S., 1925, levying an occupation tax on money lenders) having been held unconstitutional because of its defective caption or title in *Katz v. State*, 54 S. W. (2d) 130, has no life or efficacy to amend Section 15 of Article 7047, R. C. S., 1925. Moreover, since there is nothing in the amending act expressly repealing Section 15 of Article 7047, R. C. S., such section is in full force and effect.

0-144 To: Tom C. King, State Auditor and Efficiency Expert
Date: April 14, 1939

At least one examination every two years of each insurance corporation organized under the laws of the State of Texas must be made by the Chairman of the Board of Insurance Commissioners or his examiners, duly commissioned in writing. While said chairman may accept reports from non-commissioned examiners for the benefit of such information as they may contain, yet such reports and such examinations would not satisfy the mandatory provisions of the statute. Article 4690, R. C. S., as amended.

In regard to insurance corporations not organized under the laws of the State of Texas but operating in Texas under permits to do business in Texas, no mandatory examination of such companies is required by statute. Article 4690, *supra*. If, however, the Chairman of the Board of Insurance Commissioners determines that such examination should be made, the same must be made by a duly commissioned examiner, whose commission must be in writing. If, on the other hand, the chairman deter-

mines that such examination of foreign companies is not necessary, there is no statutory objection to his receiving reports from non-commissioned examiners for such information as they may contain.

Under Article 4690b, R. C. S., 1925, actuaries, examiners and assistant examiners of the Board of Insurance Commissioners cannot continue to serve as such if, while holding such position, they directly or indirectly receive or accept from any insurance company any employment, pay, compensation, or gratuity on account of any service rendered or to be rendered. However, the statute does not prescribe a penalty for the violation of the prohibited act except to disqualify such employees from further continuing to represent the state in such capacities.

0-403 To: A. Reagan, Jr., Casualty Insurance Division,
Board of Insurance Commissioners
Date: April 11, 1939

The inclusion by the Board of Insurance Commissioners of the phrase "caused by accident" and so limiting liability in the statutory endorsement forms (Section 5, Article 4682b) for attachment to liability insurance policies covering trucks and busses operating under a certificate of convenience and necessity from the Texas Railroad Commission contravenes Section 13 of the Motor Carrier Act, Article 911b, R. C. S.

0-544 To: Orville S. Carpenter, Chairman, Texas Unemployment Compensation Commission
Date: April 14, 1939

The Texas Unemployment Compensation Commission is not legally authorized to make reports of status of employing units subject to the Texas Unemployment Compensation Act available to the Texas World's Fair Commission, Inc., in order that said commission might obtain from these reports the names of employers. Article 5221-b, Section 9 (e), V. A. C. S. (Section 11-e in official copy of act with amendments)

0-638 To: Ralph Logan, County Attorney, Tom Green County
Date: April 20, 1939

A commissioners' court is not authorized to expend county funds for transportation of W. P. A. workers engaged in drilling wells and testing the mineral content of water over their respective counties under the direction of the Board of Water Engineers. Such activity is not "county business" within the meaning of Article V, Section 18, Texas Constitution.

0-634 To: S. T. Denny, County Auditor, Houston County
Date: April 20, 1939

The trial fees provided for by Article 1074, C. C. P., must be collected and paid over in the same manner as in the case of a jury fee and such fees cannot be legally paid into several separate specially created funds for each individual justice of the peace. The justice of the peace is entitled to receive his trial fees provided by Article 6052, C. C. P., by draft issued upon the county treasurer.

0-166 Amended
To: Will Crow, County Attorney, Hemphill County
Date: April 19, 1939

On appeal costs in the county court cannot be collected until judgment of the appellate court is handed down, and the pauper's oath has no application in misdemeanor cases so far as an appeal is concerned. Moreover, the county clerk cannot demand and compel the defendant to pay the cost of bills of exceptions and transcript before the same are delivered to the defendant.

C-409 To: James K. Evetts, District Attorney, Belton
Date: April 19, 1939

The commissioners' court, in fixing the minimum salaries of county attorneys under the Officers' Salary Bill (Article 3192e, V. A. C. S.) should consider fees "earned" by the officer in 1935 rather than fees "collected" in that year. Misdemeanor fees become "earned" upon final judgment, irrespective of whether the convict served time in jail. Article 1055, C. C. P., has no application in this connection. (Overrules conference opinion No. 2980). See also 0-534, 0-500 and 0-516.

0-637 To: Leon Kotosky, Assistant County Attorney, El Paso County
Date: April 19, 1939

The county clerk can install and use the photostatic method of recording written instruments which he is authorized or required to record provided such photostats are immediately incorporated into "well-bound books" and the other requirements of the statutes are complied with. Articles 6591 and 6595, R. C. S.

0-560 To: Robt. J. Allen, County Attorney, Lubbock County
Date: April 17, 1939

Signatures to a petition requesting the county school trustees to abolish a rural high school district as provided by Article 2922a, R. C. S., may be revoked by the signers thereto prior to the time that the petition has been acted upon, either by sign-

ing a subsequent revoking petition or by striking their names from the original petition.

0-662 To: Geo. H. Sheppard, Comptroller of Public Accounts

Date: April 24, 1939

When a contestant receives a prize for submitting the best last line for a five line jingle, in connection with an advertising campaign, he would be delivering a consideration which the giver of the prize would not be receiving from other patrons, and consequently, no prize tax would be payable under Article 7047f, R. C. S.

0-527 To: David E. Mulcahy, County Attorney, El Paso County

Date: April 17, 1939

The benefits of Article 6675a-6676a, R. C. S., providing for reduced commercial motor vehicle registration license fees in certain instances accrue only to a person who transports his own products to market or other points for sale or processing, and is not for the benefit of a person transporting products purchased from another farmer or transporting (from his cannery) processed goods as distinguished from farm products as specified in the statutes.

0-667 To: Truett Hubbard, County Attorney, Van Zandt County

Date: April 22, 1939

The nepotism statute, Article 432, P. C., does not render invalid a teacher's contract when, during the term thereof, a relative of the teacher is elected to the board of trustees. The statute relates only to the situation existing at the time of appointment or employment.

0-592 To: O. J. S. Ellingson, General Manager, Texas Prison System, Huntsville

Date: April 19, 1939

When a suspended sentence is revoked and the defendant is sentenced to the penitentiary and his sentence made to run concurrently with a sentence in a subsequent conviction or convictions, rather than cumulatively, as provided by Article 779, C. C. P., the sentence is not valid, and the case should be entered upon the records of the Texas Prison System in accordance with the sentence pronounced by the court.

0-368 To: R. L. Daniel, Chairman, Board of Insurance Commissioners

Date: February 25, 1939

The Grand Lodge of Colored Knights of Pythias, a fraternal benefit society (Articles 4820-4859e, R. C. S.) cannot reduce

the benefit of all flat rate policies from \$500.00 to \$200.00 by its by-laws and resolutions (as submitted) for the reason that such reduction would be unreasonable in this instance and there is no statutory authority for same.

0-516 (Conference Opinion 3045)

To: Tom A. Craven, County Auditor, McLennan County

Date: April 24, 1939

The commissioners' court is without authority to place one precinct officer upon a salary basis and leave other officers upon a fee basis. The system must be uniform and the commissioners' court must place all of the precinct officers upon a salary basis or leave all upon a fee basis under the Officers' Salary Law, Article 3912e, R. C. S.

Where the commissioners' court places the precinct officer of a county upon the salary basis as outlined in the Officers' Salary Law the commissioners' court has no authority to set a precinct officers' salary at less than the total sum earned as compensation by him in his official capacity for the fiscal year 1935; nor can it place such officer's salary at more than the maximum amount allowed such officer under laws existing August 24, 1935. Section 17b, Article 3912e, R. C. S. See also Opinion 0-409.

0-518 To: Fred T. Porter, County Attorney, Kaufman County

Date: April 20, 1939

A person may not hold the position of city health officer and also the position of county health officer; nor may a person hold the office of county health officer and also be a member of the State Board of Health. All of these officers are civil offices of emolument and holding more than one of such offices is within the prohibition of Section 40 of Article XVI of the Constitution of Texas.

0-555 To: Paul L. Wakefield, Executive Secretary, Texas World's Fair Commission, Inc.

Date: April 10, 1939

The State departments may not furnish and pay a limited staff to conduct the Texas Exhibit at the New York World's Fair inasmuch as such proposal is violative of Section 6 of Article XVI and also Section 50 of Article III of the Texas Constitution. Public interest is not sufficient standing alone to create a public purpose.

0-657 To: Joe Monkhouse, Chairman, Highway and Motor
Traffic, House of Representatives
Date: April 24, 1939

The committee substitute for S. B. 75, regulating travel bureaus, which original bill was declared unconstitutional by this department in Opinion 0-563, dated April 11, 1939, effectively cures the objections raised in such opinion, and an examination of S. B. 75 in its amended form discloses no provisions which on their face are so unreasonable as to violate the Constitution of Texas or the Constitution of the United States.

0-534 To: H. P. McMillan, County Auditor, Robertson
County
Date: April 25, 1939

This opinion holds in accordance with Opinion 0-409, dated April 3, 1939, that the commissioners' court in determining a minimum salary for the county attorney must take into consideration fees in a misdemeanor case when the fine is served in jail. See also Opinion 0-500.

0-500 To: L. P. Heard, County Auditor, Bell County
Date: April 25, 1939

This opinion holds in accordance with Opinion 0-409, dated April 3, 1939, and Opinion 0-534, dated April 25, 1939.

0-566 To: Edgar E. Payne, County Attorney, Hockley
County
Date: April 14, 1939

If a newspaper is mailed to its subscribers within a county and meets the requirements of the Acts of Congress with respect to entering at a given post office within said county and the printing or typesetting is done in another county, such a newspaper would be legally published in the county where mailed within the requirements of Articles 2039 and 2368a, R. C. S.

0-589 To: Tom C. King, State Auditor and Efficiency
Expert
Date: April 14, 1939

The State Board of Control is not authorized to pay salaries and expenses of its employees from the remains of federal funds allotted to specific projects for Centennial Celebration purposes and the Comptroller of Public Accounts is not authorized to issue warrants to be charged against such funds. Funds allotted by the Federal Government for Centennial purposes and for administrative expense should have been placed in the State Treasury. The remains or "savings" of such Federal funds allotted for Centennial purposes for specific pro-

jects cannot be used to pay salaries in excess of the limit of \$4,000.00 as prescribed by H. B. 11, Acts 1935, 44th Leg., Ch. 174, and as amended by S. B. 476, Ch. 314, Acts 1937, 45th Leg., Article 6144c, V. A. C. S.

0-532 To: Geo. W. Cox, State Health Officer
Date: April 19, 1939

Under Article 46a, Section 1, V. A. C. S., a joint adoption of a minor child by two women, both *femes sole*, is illegal, and the birth certificate of the Texas Department of Health for an adopted child may not reveal two mothers, even though the report of adoption from a district court names two women as having adopted a minor child. Such adoption proceedings are invalid and must be referred to the district court of origin for correction.

0-162 To: Geo. H. Sheppard, Comptroller of Public Accounts
Date: April 25, 1939

The sum of \$10,471.95, representing gross receipts taxes accruing against a gas utility under Article 6060, V. A. C. S., during the State's fiscal year ending August 31, 1938, and paid under protest during such year under Article 7057b, V. A. C. S., but not transferred or placed in the Gas Utilities Fund until the termination of protest suit during the fiscal year ending August 31, 1939, is subject to warrants drawn against such fund, under appropriations for the Attorney General's Department and Railroad Commission for the fiscal year ending August 31, 1939.

0-694 To: Geo. H. Sheppard, Comptroller of Public Accounts
Date: April 26, 1939

There are no provisions in our statutes allowing the Comptroller to ratify a fully executed delinquent tax contract entered into between an attorney and the commissioners' court for the collection of delinquent taxes on personal property. Articles 7335 and 7335a, R. C. S.

0-415 To: E. W. Easterling, County Attorney, Jefferson County
Date: April 25, 1939

The Board of Trustees of the Rosedale Independent School District in Jefferson County should follow the procedure set out in Article 2773, R. C. S., 1925, for the sale of its abandoned buildings and grounds.

0-668 To: Virgil A. Fielden, Chairman, Committee on
Claims and Accounts, House of Representatives
Date: April 25, 1939

The State of Texas is not liable for the hospitalization of persons ensuing from the torts or negligence of employees of the Texas Liquor Control Board.

0-539 To: H. W. Pitman, County Auditor, Fayette County
Date: April 25, 1939

Traveling expenses, hotel bills, etc., incurred in attending to leases on lands held by a county for educational purposes cannot legally be paid from the available school fund under Article 2827, R. C. S. Such expenses are properly chargeable to the General Fund of the county.

0-699 To: W. Lee O'Daniel, Governor of Texas
Date: April 27, 1939

The Governor of Texas has no power to authorize welfare authorities of Los Angeles County, California, to return the Plumlee family to Swisher County, Texas.

0-658 To: E. H. Thornton, Jr., Chairman, Appropriations
Committee, House of Representatives
Date: April 28, 1939

The "State Highway Fund" is such a "special fund" that its diversion from its prescribed purpose (such as to build a state office building) is prohibited by Article VIII, Section 7 of the Constitution of Texas. Consequently, H. B. 555, together with proposed committee amendment thereto, is unconstitutional. The Legislature may, however, direct that *future* taxes, which have heretofore been allocated to the highway fund, be hereafter devoted to any valid public purpose—such as the construction of a state office building—since the highway fund is a statutory as distinguished from a constitutional fund.

0-613 To: H. Basford, Chief Clerk, Casualty Insurance
Division, Board of Insurance Commissioners
Date: April 28, 1939

If an application for title insurance policy is not placed with the title company until all property in the designated area has been acquired by the Housing Authority, the title company would not be violating Section 21 of Article 1302a (as amounting to a rebate) in making rates based on the total purchase price plus \$10.00 for each additional chain of title.

0-651 To: Geo. H. Sheppard, Comptroller of Public Accounts
Date: April 28, 1939

The criminal district attorney of Gregg County is not entitled to receive a constitutional salary of \$500.00 from the State in addition to the compensation provided in Article 3912e, Section 15, R. C. S., the Officers' Salary Act. Section 21 of Article V, Constitution of Texas.

0-665 To: Robert F. Cherry, County Attorney, Bosque County
Date: April 26, 1939

Under Article 335, V. A. C. S., the county attorney is:

1. Entitled to the commission therein specified upon the payment of an agreed judgment obtained by such county attorney against a defaulting tax collector, although the filing of a suit by the county attorney is not a necessary prerequisite if the other requirements in Articles 335 and 339, R. C. S., have been complied with. The county attorney is entitled to receive payment out of the general fund of the county in cases in which he has not deducted his commission prior to turning the money collected over to the county treasurer.

2. The county attorney is not entitled to any fee upon conviction or plea of guilty to a misdemeanor in the county court where the sentence imposed is confinement in jail for a period of time without fine and where no fine or costs are actually paid by the defendant.

3. The commissioners' court has no statutory authority to allow any sums of money to its members for expenses.

4. It is the duty of the county attorney—when ordered by the commissioners' court—to institute proceedings to collect the penalty provided by Article 3897, R. C. S., as amended, when an officer fails to file his annual statement of fees, commissions and other compensation earned, as provided by the statutes.

C-633 To: Geo. H. Sheppard, Comptroller of Public Accounts
Date: April 26, 1939

A producer of natural gas entered into a contract with a pipe line company for the sale and purchase by the latter of the gas at an agreed "actual market value" of three and one-half cents per thousand cubic feet at the pipe line company's eighteen inch pipe line seven miles from the wells, the producer erecting its own pipe line to this point. The gas should be taxed under

the "gross receipts tax" on natural gas provided for in Article 7047b, R. C. S., on the basis of the actual market value at the well, and not on the basis of the actual market value at the place of the first sale if that place is away from the well. If the gas has no market value at the well, its market value at the well may be determined by taking the actual market value where there is a market after deducting the cost of transportation.

0-669 To: Bascom Giles, Commissioner, General Land Office

Date: April 29, 1939

A lessee of the State of Texas under oil and gas lease No. 12724, covering 398.229 acres of Trinity River Bed in Liberty County is not entitled to a refund from the State for the past eight years' annual rental payments when such lessee paid the State 25c per acre instead of \$2.00 per acre legally due. See Opinion 0-523 (Conference Opinion 3044). To refund this amount would permit the lessee to receive the benefits of the lease for a period of seven years without any consideration having been paid therefor. Moreover, such refund would be violative of Section 44 of Article III of the Constitution of Texas.

0-428 To: Clint A. Barham, County Attorney, Erath County
Date: April 26, 1939

A number system used by a theatre where each seat in the theatre is numbered and where a ticket is selected or drawn from a number of tickets containing all the numbers on the seats and a money award or other thing of value is given to the person sitting in the seat that has a number corresponding with the number drawn is a "lottery" and the operation thereof is a violation of Article 654 of the Penal Code.

0-601 To: Lewis M. Williams, District Attorney, Benjamin
Date: April 19, 1939

A transfer of funds raised by taxation from the jury fund to the general fund is inhibited by Article VIII, Section 9 of the Constitution of Texas, both being constitutional funds; Article 1630, R. C. S., 1925, is not applicable.

0-618 To: Bert Ford, Administrator, Texas Liquor Control Board

Date: April 24, 1939

Under Section 24 (1)a of Article 2 of the Texas Liquor Control Act, Article 666-1 et seq., V. A. P. C., a distributor of beer cannot continue to hold his license while he owns property leased to a person who is in the retail beer business and is carrying on such business on the leased premises.

0-712 To: W. Lee O'Daniel, Governor of Texas
Date: April 29, 1939

The Governor of Texas is the proper officer, as chief executive officer of the State, to execute a release of certain bonds executed by the Texas and New Orleans Railroad Company, evidencing loans from the special school fund of the State of Texas to said railroad company provided he is satisfied that the bonds covered by the release have been paid in full in accordance with the provisions.

0-622 To: W. Lee O'Daniel, Governor of Texas
Date: April 27, 1939

The constitution and statute laws of the State of Texas have no provisions with respect to "crimes against the Constitution."

0-621 To: E. G. Garvey, County Auditor, Bexar County
Date: April 28, 1939

The Legislature in enacting Article 3912e, the Officers' Salary Law, did not intend that the county auditor should exercise the authority of withholding the issuance of an official's salary warrants merely because he is of the opinion that the officer (sheriff) has been derelict in collecting fees or that he has made collections which he has not accounted for. Ordinarily, in this connection, the county auditor will have performed his full duty when he shall have audited the official's required annual statement and filed his "report" with the district attorney.

0-654 To: J. B. Engledow, Assistant County Attorney,
Limestone County
Date: April 26, 1939

At a county-wide local option election held in Limestone County in 1934 the sale of 3.2% beer was legalized. The proper form of ballot should now be as set out in Article 666—40 (i), P. C.

voters for the purpose of holding a local option fees election, and such ballots are not canvassed nor the results declared or published, this action does not constitute such a local option election as provided for under the provisions of the Texas Liquor Control Act, Article 666—32 et seq., P. C. Being voidable,, this election would not prohibit or render invalid an order of the commissioners' court ordering another election to be held for the same area within twelve months, in which a proper issue is

When an election is held submitting the wrong issue to the submitted.

0-355 To: K. D. Hall, County Attorney, Refugio County
Date: April 24, 1939

The comissioners' court of the county in which an election is held in an independent school district of less than five hundred

scholastics is the body which should canvass the returns, declare the result and issue commissions to trustees elected. Article 2746a, R. C. S., as amended. Article 2776, R. C. S., distinguished.

As to common school districts, the board of trustees of the common school district in which the election is held is the proper body to canvass the returns, declare the results and issue commissions to the persons elected. Article 2746, R. C. S., having been re-enacted in 1937, subsequent to the passage of Article 2746a, R. C. S., had the effect of superseding the latter article in these respects.

0-649 To: O. Kennedy, County Attorney, Bee County
Date: April 26, 1939

Trustees of rural high school districts (Articles 2922a and 2922e, R. C. S.) should be elected and should serve in accordance with the provisions of General Law (Articles 2745, as amended, 2746, as amended, 2746a, as amended, R. C. S.) relative to common school districts, Article 2922a, R. C. S. Since the election of common school district trustees does not constitute a "special" but a "general" election, the provisions of the Terrell Election Law, Title 50, Article 2923, et seq., R. C. S., apply when the rule has not been otherwise set out. *Scherz v. Telfer*, (1934), 74 S. W. (2d) 327.

Although the trustees of rural high school districts should be elected from the district at large as expressly provided by Article 2922e, R. C. S., the accuracy of the posted notice is not a jurisdictional prerequisite to the authority to hold such a trustee election. Where the notice of such election indicated that one trustee would be elected from each of two of the component common school districts, rather than at large, such irregularity does not invalidate the election. Article 2949, R. C. S., and *Countz v. Mitchell*, (1931) 38 S. W. (2d) 770.

0-464 To: Warren McDonald, County Attorney, Smith County
Date: April 27, 1939

Money collected as fire insurance on a school building destroyed by fire is a local school fund and can only be used for those school purposes enumerated in Section 2 of Article 2827, R. C. S. These proceeds may not be used in improving a church in the school district. See also Opinion 0-362.

The board of trustees of a rural high school district cannot appropriate for the use and benefit of the rural high school district created under Articles 2922a and 2922b, R. C. S., the money collected as fire insurance on a burned school building which belonged to and was used as an elementary school by one

of the common school districts comprising the rural high school district. *Chastain v. Mauldin*, 32 S. W. (2d) 237.

0-616 To: Fred Norris, County Auditor, Polk County
Date: April 13, 1939

The county judge, judge of the county court at law or justice of the peace is entitled to the full trial fees provided by Article 1052, C. C. P., for each case tried and finally disposed of. These fees are paid by the county in the manner set out in such article, and the manner in which a judgment in a misdemeanor case is satisfied is immaterial whether the defendant pays his fine and costs or works his fine and costs out on the county farm, public roads or other public works of the county or satisfies such fine and costs by remaining in jail a sufficient length of time.

The district or county attorney is entitled to 10% of all fines, forfeitures or money collected for the State or county upon judgments recovered by him; and the clerk of the court in which such judgments are rendered is entitled to 5% of the amount of the judgment. Article 950, C. C. P.

A sheriff collecting money for the State or county under any provision of the Code of Criminal Procedure is entitled to retain 5% of the amount collected. Article 951, C. C. P.

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