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MONTHLY REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF TEXAS



GERALD C. MANN
ATTORNEY GENERAL

VOLUME 1, NUMBER 4

MAY, 1939

FIRM FOUNDATION PUBLISHING HOUSE
Austin, Texas

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OPINIONS RENDERED

May 1, 1939

To

May 31, 1939

0-01 To: Eugene Brady, Assistant County Attorney, Hunt County
Date: May 13, 1939

Notion or variety stores selling various articles and incidentally selling toy pistols would not be subject to the occupation tax imposed by Section 38 of Article 7047, R. C. S. *Hurt v. Cooper*, 110 S. W. (2d) 896.

0-169 To: R. S. Wyche, County Auditor, Gregg County
Date: May 3, 1939

Sec. 13 of Art. 3899, empowering certain named county officers to purchase supplies of office, gives these officers this authority only with respect to the purchase of office *supplies* as distinguished from furniture and fixtures such as typewriters, filing cabinets and similar things. Moreover, these articles are not included in the term "all reasonable expenses necessary in the proper and legal conduct of this office, etc.;" the rule of *ejusdem generis* restricting this general language to supplies of the same type as the specific articles named. *State v. Carnes*, 106 S. W. (2d) 397; *Cameron County v. Fox*, 42 S. W. (2d) 653. Article 3259 and 1659, R. C. S.

0-170 To: A. P. Prestwood, County Auditor, Smith County
Date: May 23, 1939

Any sum, not to exceed Three Hundred Dollars per annum, allowed to the county superintendent as expenses under the provisions of Article 2700, R. C. S., would cover and include both traveling and office expense.

0-211 To: James M. Kilday, Director, Motor Transportation Division, Railroad Commission of Texas
Date: May 8, 1939

Red Arrow Freight Lines, Inc., is not permitted by reason of the second restriction in its certificate of convenience and necessity No. 3009, authorizing such company to operate as a common carrier motor carrier between certain points, to pick up and interline freight or render any common carrier service on freight originating in or destined to Hallettsville and Yoakum.

0-246 To: H. Edward Johnson, County Attorney, Hood County
Date: April 29, 1939

A county treasurer is not entitled under Art. 3941, R. C. S., to commissions on the issuance of script or warrants merely registered and to be corrected later into interest bearing time warrants. Such warrants do not constitute a disbursement of county funds or "moneys" paid out. *McKinney v. Robinson*, County Judge, 84 Texas 489.

A county treasurer is not entitled to commissions under Article 3941, R. C. S., on interest bearing time warrants as money "paid out" when such warrants become due and are paid from funds of a finance agency, other than county funds.

0-320 To: Joe Kunschik, Commissioner of Labor, Bureau
of Labor Statistics
Date: May 4, 1939

Under Sec. 18 of Art. 5221c, R. C. S., The Inspection of Steam Boilers Act, the appropriation effected thereby terminates by the limitation of Art. VIII, Sec. 6, of the Constitution of Texas two years after the effective date of the act; and although the moneys of the "State Boiler Inspection Fund" created thereby are earmarked for the purpose of the act and dedicated thereto, nevertheless the unexpended balance cannot be expended after the expiration of the original appropriation without further legislative action.

0-429 To: J. M. Allen, County Auditor, Hunt County
Date: May 19, 1939

A county auditor is not authorized to approve for payment a warrant issued to a son and son-in-law of a member of the board of trustees of a common school district in violation of Article 432, Penal Code of Texas, and the resignation of such member relative of said board would not make the approval for payment lawful.

0-455 To: H. T. Brown, Chairman of Committee on Edu-
cation, House of Representatives
Date: May 18, 1939

Article II of Committee Substitute for H. B. 340, concerning a graduated tax on the production of oil is valid and constitutional and provides a reasonable classification under Sections 1 and 2, Article VIII, Constitution of Texas, and the 14th Amendment to the Constitution of the United States. *Hurt v. Cooper*, 130 Texas 433, 110 S. W. (2d) 896; *New York Rapid Transit Corporation v. City of New York*, 303 U. S. 573, 58 S. Ct. 721.

0-457 To: Dwight Whitwell, Assistant County Attorney,
Collin County
Date: May 22, 1939

A W. P. A. worker on a county road project, drawing his pay from the United States Government and driving a county-owned truck, is not exempt from obtaining a chauffeur's license under Section 3 (b) of Article 6687a, Vernon's Annotated Civil Statutes, because he is not "operating an official motor vehicle" within the exemption provision "official motor vehicle" meaning a Federal Government-owned car in this particular subdivision of Section 3 of the Act.

0-468 To: Mortimer Brown, Executive Secretary, Teacher Retirement System of Texas

Date: May 17, 1939

If a member of the Teacher Retirement System applies for withdrawal and the return of his accumulated contributions because of having ceased to be a teacher, he would automatically become a teacher if in the future he should teach again in the public schools of Texas. Acts 1937, 45th Legislature, Chapter 470, p. 1178.

0-476 To: George H. Sheppard, Comptroller of Public Accounts

Date: May 18, 1939

The royalty interest of a city, town or village is not subject to the gross production tax, Art. 7057a, R. C. S. Article VIII, Section 1, Constitution of Texas.

The royalty interest of an independent school district or a common school district is not subject to the gross production oil tax, Art. 7057a, R. C. S. Article VIII, Section 1, Constitution of Texas. *Love v. City of Dallas*, 120 Tex. 351, 40 S. W. (2d) 20; *Harlingen Independent School District v. C. H. Page and Brother* (Comm. App.) 48 S. W. (2d) 983.

A county's royalty interest is not subject to the gross production oil tax, Art. 7057a, R. C. S. *Group No. 1 Oil Corporation v. Sheppard*, 89 S. W. (2d) 1021 (Writ of Error Refused). Counties are in one sense, municipal corporations. Article XI, Texas Constitution. Art. VIII, Section 1, Constitution of Texas; 30 Tex. Jur. 15; *Heigel v. Wichita County*, 84 Tex. 392, 19 S.W. 562; *Johnson v. Llano County*, 15 Tex. Civ. App. 421; *Brite v. Atascosa County*, 247 S. W. 878. See also Opinion 0-442.

The words "charitable" and "eleemosynary" have the same meaning. *Nixon v. Brown*, 46 Nev. 439, 214 Pac. 524, and the royalty interest of a privately owned charitable or eleemosynary institution is subject to the gross production oil tax, Art. 7057a, R. C. S. Under Article 7150, R. C. S. the Legislature has only exempted private charitable institutions from taxation on their property. Article VIII, Section 2, Constitution of Texas.

There is no difference in the royalty owner's tax liability for gross production taxes by virtue of the royalty being payable in oil in one instance and being payable in money obtained from the landowner's share of the oil in the other instance under Article 7057a, R. C. S.

The gross production tax (Art. 7057a, R. C. S.) is not a property tax but an occupation tax and the fact that the land from which this oil is produced is exempt from taxation does not result in the production of the oil being exempt from the gross production tax. *Trustees of Cook's Estate v. Sheppard*, 89 S. W. (2d) 1026 (W. E. R. by Tex. Supt. Ct. and aff'd by U. S. Sup. Ct.); *Group No. 1 Oil Corporation v. Sheppard*, supra.

0-571 To: T. M. Trimble, First Assistant State Superintendent
Date: May 9, 1939

Assuming that H. B. 170 was presented to the Governor on April 17, 1939, the bill became effective ten days (Sundays excepted) after that date, Sec. 14, Art. IV, Constitution of Texas. The date on which the bill was received and filed in the office of the Secretary of State is immaterial.

0-572 To: W. A. Morrison, Criminal District Attorney,
Cameron
Date: May 19, 1939

Articles 324 and 324a, R. C. S., do not apply to criminal district attorneys, but Article 326q, R. C. S., provides for the appointment of the staff of a criminal district attorney. Under this article the appointment of any assistant district attorney possessing the qualifications of criminal district attorneys or county attorneys must be ratified by the commissioners' court; while the appointment of an assistant criminal district attorney not possessing the qualifications required by law of criminal district attorneys or county attorneys must be governed by the provisions of Article 3902, R. C. S. Consequently, an assistant criminal district attorney must be paid out of the Officer's Salary Fund and the commissioners' court must make an order granting authority to make the appointment, at a stated salary, of an assistant criminal district attorney not possessing the qualifications required by law of district and county attorneys, under Art. 3902, R. C. S.

0-579 To: Dr. T. J. Crowe, Secretary, Texas State Board
of Medical Examiners
Date: May 10, 1939

A graduate of a medical school is entitled to take the examinations offered by the State Board of Medical Examiners if the school from which he received his diploma is a "reputable medical school" as that term is defined in Art. 4501, R. C. S., as amended. It will be the duty of the Board to determine this fact and in making this determination the Board should take into consideration that the sixty semester hours of college credit required refers to such credits as would be acceptable to the University of Texas for credit on a Bachelor of Arts or a Bachelor of Science Degree. It is not necessary that this credit be acquired prior to the acquisition of the diploma from a reputable medical college.

With reference to the reciprocal granting of licenses provided for in Art. 4500, R. C. S., as amended, the Board of Medical Examiners in this state should not grant a license to practice medicine in this State to an applicant who does not hold a license issued by another state, territory, or district of the United

States, giving to him the same right to practice medicine in the state, territory or district issuing the license, which a license to practice medicine in this State gives to a physician of this State of Texas. In other words, if a person has a limited license in another state, he would not be entitled to the general license to practice medicine issued by the Board of this State.

The intendment of Art. 4501, R. C. S., as amended, is that all of those persons now regularly enrolled in a medical school whose graduates are at this time permitted to take the examination in Texas, may upon the completion of their work, be entitled to take the examination in Texas. This article does not attempt to take care of those persons desiring to take the examination in a foreign language.

Article 4504, R. C. S., and Art. 740, P. C., prohibit a religious creed or group from maintaining offices except for the purpose of exercising the principles or beliefs of the church of which they are bona fide members; but these statutes do not prevent the group from attempting to heal by prayer so long as they do not attempt to use any drug or material remedy or maintain offices for medical purposes.

0-581 To: Jay Sam Levey, Assistant District Attorney, San Antonio
Date: May 10, 1939

A person in business for himself, operating his own automobile upon which there is a commercial license, in the buying and selling of produce is not an employee, servant, agent or independent contractor and is, therefore, not a chauffeur within the scope of the definition of Article 6687a, Vernon's Annotated Civil Statutes. Hence, he need not obtain a chauffeur's license.

A person who owns an unincorporated plumbing company which operates several trucks and who drives one of his own trucks, is not a "chauffeur" under Article 6687a, V. A. C. S., since he is neither employee, servant, agent or an independent contractor; therefore, it is not necessary for him to obtain a chauffeur's license.

0-586 To: W. C. McDonald, County Attorney, Coke County
Date: May 25, 1939

If a scholastic is living in an independent school district for the sole or principal purpose of attending the schools of that district, he is a resident of the common school district in which his parents reside for the purpose of scholastic enumeration and should be enumerated in the scholastic census of that district. However, if he has in good faith established a substantial residence, and not a mere ostensible residence for the purpose of attending school, he may properly be enumerated in the independent school district. Articles 2816, 2901, 2892l R. C. S.

0-589 (Supplemental)

To: Tom C. King, State Auditor

Date: May 13, 1939

This opinion supplements Opinion 0-589, reported in Vol. 1, No. 3, *Monthly Report of Attorney General*, page 117, and reviews supplemental facts submitted with reference to the proper disposition and expenditure of certain federal funds under the Texas Centennial Celebration statutes and amendment.

0-600 To: T. P. Walker, Auditor, Department of Education
Date: May 25, 1939

There is no statute requiring the intervention of any particular period of time between the holding of elections to consolidate common and independent school districts. When the requisites of Article 2806, R. C. S. have been complied with, elections may be called without reference to the length of time that has passed since a previous similar election.

0-607 To: D. Richard Voges, County Attorney, Wilson
County
Date: April 19, 1939

A farmer may transport his livestock in a truck operated with a farm commercial license to the places of breeding if the truck is otherwise used only for farm purposes provided that the use of the truck for hauling such livestock must be an occasional use only. Art. 6675a-6a, R. C. S.

Under our statutes if a truck is used on the public highways of this State it must be registered. Consequently, a truck used only for power purposes in the drilling of wells, but one that moves from places of operation under its own power must be registered. Art. 6675a, R. C. S.

0-625 To: Julian Montgomery, State Highway Engineer
Date: April 26, 1939

Neither Art. 1616, P. C., nor any other article contained in Chap. 9 of Title 18 of the P. C. of Texas, the "blacklisting statutes" will operate to prevent the Highway Department from furnishing to its employing engineers a list of the names of employees with comments upon their services or attitudes.

0-626 To: Willie O'Neal, County Auditor, Carson County
Date: May 26, 1939

In counties in which officers are compensated on a fee basis the County Clerk is entitled to a commission of 5% for a fine imposed in the county court, and, in addition, the sheriff is entitled to a 5% commission on the fine if he actually collected the same. Articles 949, 950, 951, C. C. P.

0-627 To: Hon. Julian Montgomery, State Highway Engineer
Date: May 9, 1939

The purpose clause of the Bethlehem Steel Company's permit to do business in Texas does not include and cannot be construed to include the construction of steel bridges within this State.

0-628 (Conference Opinion 3052)
To: Julian Montgomery, State Highway Engineer
Date: May 23, 1939

Article 6675a, V. A. C. S., construed as a whole, forbids retention of the duplicate license receipt fees provided in Section 12a by the county tax collector and also denies separate payment by him of these fees directly to the Highway Department, but provides for their payment into the gross collections fund with all other fees collected under such act. *Bowie County v. McDuffie, et al*, (1937) 103 S. W. (2d) 1062.

The twenty-five cent fees collected by the State Highway Department directly for the issuance of duplicate license receipts under Article 6675a, supra, are retained by it; whereas the same fees collected by the county tax collector are commingled with other fees and come to the Highway Department through apportionment under Section 10 of the act.

0-629 To: I. Predecki, County Auditor, Galveston County
Date: May 8, 1939

The commissioners' court is without authority to levy a tax for the construction and maintenance of a drainage system for reclamation purposes in any manner other than that provided in Chap. 40, page 78 of the Acts of 1909, 30th Leg., and Chap. 118, page 245 of the Acts of 1911, 32nd Leg., R. S., Arts. 8098, et seq., V. A. C. S. A tax levy cannot properly be made against the permanent improvement fund for this purpose; and under the particular circumstances set out a levy could not properly be made against the general fund of the county.

0-635 To: R. E. Beasley, County Auditor, Collin County
Date: May 1, 1939

When an arrest is made in the county where the offense is committed the accused must be taken before a magistrate, as required by Articles 217 or 233 of the C. C. P., and the officer arresting is entitled to be compensated for removing or conveying prisoners, for each mile going and coming, including guards and all other necessary expense, when travelling by railroad, ten cents, and when traveling otherwise than by railroad, fourteen cents; Art. 1029, 1031, C. C. P.

0-636 To: Joe C. Gladney, Criminal District Attorney, Henderson
Date: April 29, 1939

Assuming that under the 1940 Federal Census, the population of Rusk County will be between 50,000 and 65,000, inhabitants of such county will not be exempt from the operation of Art. 2744e, V. A. C. S., authorizing the levy of county-wide equalization taxes in counties having a population of not less than 20,000 nor more than 32,500, *according to the last preceding Federal Census*, and the taxes levied by said Article and assessed for the year 1940 before the taking of the 1940 census may be lawfully collected.

0-640 (Conference Opinion 3048)
To: Tom C. King, State Auditor
Date: May 8, 1939

1. While, when the Legislature provided for placing in the Suspense Account, "money the status of which is undetermined or which is awaiting the time when it can be finally taken into the Treasury," (Art. 4388, R. C. S.) it impliedly excluded the authority for placing any other moneys or funds in such account, nevertheless, there may be moneys concerning the legal status of which there is no question and yet for some reason cannot be taken into the Treasury. In such event these funds should go into the Suspense Account until it can finally be taken into the Treasury.
2. Art. 7057b, R. C. S., 1925, as amended, does not repeal Art. 4388, R. C. S., 1925, but the two must be construed together.
3. The enumeration of particular taxes and fees in Art. 7057b, R. C. S., providing for the payment of certain moneys due the State under protest and the placing of these moneys in suspense as set out in such Article does not necessarily prevent its being placed in suspense under Art. 4388, R. C. S., although payment is not accompanied by a written protest as provided for in Art. 7057b, Sec. 1.
4. If payment of taxes and fees is made under Art. 7057b, R. C. S., accompanied by a written protest and if at the expiration of 90 days no suit has been filed in a court of competent jurisdiction in Travis County, Texas, for the recovery of such taxes and fees, the collecting department cannot legally keep or cause to be kept in suspense such taxes or fees, unless their status is not otherwise undetermined as set out in Art. 4388, R. C. S.

0-642 To: George H. Sheppard, Comptroller of Public Accounts
Date: May 13, 1939

The Comptroller of Public Accounts under Article 7248, R. C. S., may make such requirements regarding the number and responsibility of sureties as his official discretion, exercised in the public interest, might dictate, but may not lawfully require the execution and filing by a tax assessor-collector of a bond in excess of the amount fixed by Article 7247, as amended, R. C. S. This is controlled by the mandatory provisions of Article 7247, R. C. S. 61 C. J. 1031; *Steusoff v. Liberty County*, 34 S. W. (2d) 643; *Kane v. Garfield*, 13 A. 800; and *Hulbert Special School District v. Cooper*, 20 S. W. (2d) 322.

0-644 To: S. B. Buchanan, Jr., County Attorney, Val Verde County.

Date: May 6, 1939

Council No. 18 of the League of United Latin American Citizens, a civic, patriotic and educational organization or a traveling show employed by them for the purpose of obtaining funds for a student loan fund, is not liable for the occupation tax levied by Section 22a, Article 7047 as amended, Vernon's Annotated Civil Statutes, or Section 19, Article 7047a, Vernon's Annotated Civil Statutes, under the facts and circumstances set forth.

0-645 To: Furman B. Caudle, County Attorney, Franklin County

Date: April 29, 1939

The mere handing of a petition to consolidate school districts to the county judge to read, with instructions not to then file the same and taking the same from his office without the filing thereof did not constitute such filing of such petition for election as would prevent the county board of school trustees from entering such order as they see fit with respect to the grouping of common school districts into a rural high school district prior to the actual filing of the petition in question. *Maddox v. Hemp-hill*, 30 Tex. 497.

0-646 To: Mortimer Brown, Executive Secretary, Teacher Retirement System of Texas

Date: May 17, 1939

The date upon which the Teacher Retirement Act (Acts 1937, 45th Leg., Chap. 470, p. 1178) became effective as applied to Section 3, Subsection 5 of the act, was June 9, 1937. Art. III, Section 39, Texas Constitution.

The Retirement Board of Trustees under the Teacher Retirement Act may determine whether a person has been employed as a teacher as contemplated by Section 3, Subsection 5, of the Teacher Retirement Act prior to June 9, 1939, subject to the limitation, however, that a person should be recognized as a teacher who has secured a bona fide written contract prior to June 9, 1939, that calls for his services to begin as soon as that school opens for the next regular school term.

0-647 To: Morris G. Rosenthal, Assistant District Attorney, Houston
Date: May 5, 1939

Under Article 430a, P. C., Acts 43rd Leg., R. S. 1933, Chapter 238, page 835, a person, not licensed to practice law in this state, may not appear in the justice courts as agent or as attorney in fact for another person or a corporation and file for such person or corporation suits for forcible detainer or for collection of open accounts or notes.

The practice of law in municipal or corporation courts by persons not licensed to practice law is forbidden by Article 430a of the Penal Code, since the corporation court clearly appears to be "a court" upon which "judicial power" has been conferred by the statutes.

A request for or an agreement to a postponement, continuance, resetting or dismissal of a case constitutes practice of the law within the meaning of Article 430a of the Penal Code.

The appearance for and entering a plea of guilty for another in a misdemeanor case constitutes the practice of the law within the meaning of Article 430a of the Penal Code. *Ex parte Jones*, 46 Tex. Cr. 433, 80 S. W. 995; *Ex parte Super*, 76 Tex. Cr. 415, 175 S. W. 697; *Ex parte Williamson*, 76 Tex. Cr. 639, 177 S. W. 89.

0-650 To: H. A. Hodges, County Auditor, Williamson County
Date: May 11, 1939

This opinion holds in accordance with Opinion 0-155 and Opinion 0-133 to the effect that precinct officers' subpoenas and processes in criminal cases for a foreign county (operating with the fee system) should be paid from the Officers' Salary Fund of their home county (precinct officers being on fee basis and county officers on salary basis). Art. 3912e-17b, R. C. S.

0-652 To: John C. Marburger, County Attorney, Fayette County
Date: May 1, 1939

Any motor vehicle which is operated to any extent upon the public highways of this State must be registered, unless the same comes within the exemptions as set out in Art. 6675a-2, R. C. S.

0-653 To: E. H. Griffin, County Attorney, Young County
Date: May 2, 1939

Valid teachers' contracts with three teachers may be executed by the board of trustees of a common school district for the following year even though the average daily attendance is about 58 pupils under Art. 2750, R. C. S.; provided, however, that such contracts are approved by the county superintendent. *Singleton v. Austin*, (T. C. A. 1901) 65 S. W. 686.

0-660 To: Tom L. Beauchamp, Secretary of State
Date: May 4, 1939

The Southwest Arkansas Electric Cooperative Corporation, a foreign corporation, is not organized for pecuniary profit within the intendment of Art. 1529, R. C. S., and such a corporation should be granted a permit to operate in this State under the provisions of Art. 1528b, R. C. S. A \$50.00 filing fee should be charged under the provisions of Art. 3914, R. C. S. and the franchise or license tax due is set out in Sec. 30 of Art. 1528b.

0-661 To: George Van Fleet, Actuary, Board of Insurance
Commissioners
Date: May 18, 1939

The provisions in Article 2530, R. C. S., allowing banks making deposits of securities to endorse and stamp the same, are a part of Chapter 1, Title 47, R. C. S., dealing with state depositories and the same has no application to the \$50.00 in securities the Second National Bank of Houston, Texas, has on deposit with the State Treasurer required by Article 4983, R. C. S., and the Second National Bank is not privileged to avail itself of this right.

0-664 To: Bascom Giles, Land Commissioner
Date: May 1, 1939

Under Art. 5421c, V. A. C. S., giving a preferential right to one having land enclosed after once claiming it in good faith or occupying it as a home to purchase such land from the state on application by a third party, if field notes are filed by the occupant with the Land Office within 120 days from the date of the filing of his application for a survey with the county surveyor, they are filed within sufficient time within such statutes.

If under Art. 5421c, V. A. C. S., the occupant does not have 120 days from the date of the filing of his application within which to file field notes in the Land Office, then it is only a question of whether the field notes are filed in the Land Office within a reasonable time after filing of an application for survey by the applicant. *Creighton v. State* (unpublished opinion of the third Court of Civil Appeals on April 26, 1939).

0-666 To: O. J. S. Ellingson, General Manager Texas Prison
System, Huntsville
Date: May 3, 1939

The time spent by a convict in the state insane asylum should not be counted on his sentence. Art. 34, P. C.; Arts. 925, 928, C. C. P.

0-671 To: Joe Kunschik, Commissioner of Labor, Bureau
of Labor Statistics
Date: May 23, 1939

A night watchman is within the scope of the classification of "laborers, workmen or mechanics," common to both Articles 1579 and 1580, as amended, V. A. P. C. (dealing with an eight-hour day); and if in addition to watching the property he is required to perform duties substantially and materially involving and promoting the construction of a building, he would be subject to the provisions of Article 1579, as amended, if the other conditions of the statute are met.

0-672 To: Mrs. Faye Stewart, President, State Board of
Hairdressers and Cosmetologists
Date: May 9, 1939

An applicant for a renewal beauty operator's license unable to furnish a negative Wasserman Test along with the application during the year following the expiration of his or her license but thereafter makes application must qualify as any other new applicant for a license. Art. 734b, P. C.

0-674 To: W. E. Barron, County Attorney, Grimes County
Date: May 8, 1939

A zoning ordinance of the city of Navasota, Texas, prohibiting the erection of filling stations in certain designated areas, is invalid under the facts stated for failure to comply with the statutory requisites set out in Arts. 1011a to 1011j, R. C. S., such as want of proper notice and hearing, failure to appoint a zoning commission, etc. *Mayor et al v. Gough et al*, 85 S. W. (2d) 515.

0-675 To: Leo Presnell, County Attorney, Upshur County
Date: May 5, 1939

When Art. III, Sec. 56, and Art. VII, Sec. 3, of the Texas Constitution are construed together, the Legislature is without authority to change the boundaries of a common school district by special or local law. *Fritter v. West*, (T. C. A. 1933) 65 S. W. (2d) 414; *Brownfield v. Tongate*, (T. C. A. 1937) 109 S. W. (2d) 352.

0-677 To: D. Richard Voges, County Attorney, Wilson
County
Date: May 12, 1939

County officers are not entitled to one-half the costs as provided for in Article 1055, C. C. P., when persons convicted of misdemeanors and unable to pay their fine and costs are permitted to work as janitor around the courthouse, and jail and maintain and keep the courthouse lawn. Such labor is not working on "public works" or "public improvements" within the meaning of Articles 793 and 794, C. C. P.

0-679 To: W. W. Boyd, Director Coastal Division Game,
Fish and Oyster Commission, Corpus Christi
Date: May 23, 1939

Where any seine, strike net, gill net, trammel net or shrimp trawl is found by any officers of the state unpossessed in closed waters in violation of Article 9521-10 V. A. P. C., and it is seized and delivered to the county judge or justice of the peace in accordance with provisions of Section 3 of said article, the requirement of posting 30 days' notice is indicative of the recognition by the Legislature of the right of an innocent owner of title, without whose knowledge or consent it was illegally used in violation of law, to a hearing and to a restoration of the device in the event of satisfactory establishment of the lack of participation, consent or knowledge of the rightful owner to the prohibited act. Section 17, Article I, and Section 19, Article I, Constitution of Texas. *Lynn v. State*, 25 S. W. 779.

0-632 (Conference Opinion 3047)
To: R. C. Musslewhite, District Attorney, Lufkin
Date: May 5, 1939

The fact that a local option election was held in a dry county less than a year ago upon the issue of legalizing the sale of beer that does not contain alcohol in excess of four (4%) per centum by weight does not prevent the holding of a local option election at this time to submit to the voters the separate and distinct statutory issue upon the question of legalizing the sale of malt and vinous beverages that do not contain alcohol in excess of fourteen (14%) per centum by volume.

0-633 To: Albert J. Hutson, Jr., County Attorney, Trinity
County
Date: May 4, 1939

Neither the tax assessor-collector nor anyone else has the power or authority to levy on and sell real estate for delinquent taxes except after foreclosure of the tax lien by a court, as provided by Art. 7328a, R. C. S., Sec. 13 of Art. VIII, Constitution of Texas.

0-634 To: A. M. Pribble, County Attorney, Mills County
Date: May 13, 1939

Teachers' contracts executed, filed with and approved by the county superintendent subsequent to the order of an election to consolidate the common school district with an independent school district are not binding on the consolidated district. Articles 2806 and 2809, R. C. S. *State ex rel George v. Baker*, 40 S. W. (2d) 41.

A newly elected board of school trustees may not arbitrarily refuse to honor teachers' contracts entered into by the former board of trustees, although such contracts have not as yet been approved by the county superintendent. *Miller v. Smiley* (T. C. A. 1933) 65 S. W. (2d) 417 (W. E. R.).

Contracts between teachers and common school trustees were duly executed and marked "officially filed" but not approved by the county superintendent. Later an election was held and the common school district was consolidated with an independent school district. These contracts are not binding on the consolidated district. See also Opinion 0-562.

0-685 (Conference Opinion 3051)

To: R. C. Slagle, Jr., Criminal District Attorney,
Sherman

Date: May 23, 1939

When a person has been adjudicated insane by a court of competent jurisdiction, and confined in a state institution, if this institution unconditionally discharges this person whose mental condition later becomes such that it is necessary that he be recommitted, it is necessary that the person be tried again for insanity before he can be committed to or confined in the institution from which he was discharged, even though the original judgment of conviction has not been set aside. Articles 3193i et seq., R. C. S. *Byers v. Solier*, 16 Wyo. 232, 93 Pac. 59 (1907).

0-686 . To: Tom L. Beauchamp, Secretary of State
Date: May 8, 1939

Gas pipe line companies defined in Art. 6050, R. C. S., 1925, as public utilities should be classified as public utilities corporations for franchise tax purposes as that term is used in Art. 7084 (d) R. C. S., 1925, as amended: provided, however, their business is solely that of a public utility. *Gulf States Utilities Company v. State*, (T. C. A., 1932) 46 S. W. (2d) 1018.

0-687 To: F. E. Rightor, Secretary, Texas State Board of
Registration for Professional Engineers
Date: April 28, 1939

\$10.00 is the maximum fee collectible for renewal of certificates of registration of professional engineers and it is not the intention of S. B. 74, Acts 45th Leg., 1937, Art. 3271a, R. C. S., that the registrant should be charged the total of \$10.00 for each year he is delinquent even though he delays renewing his license for several years.

0-689 To: J. B. Keith, Chairman, Board of Pardons and Paroles
Date: May 1, 1939

The insanity of a convict has no effect upon the authority of the Board of Pardons and Paroles to recommend and the Governor to grant a commutation of his death sentence to that of life imprisonment. A pardon, particularly a conditional pardon, requires the consent of the convict before it becomes effective, and an insane convict is incapable of giving his consent. However, "a commutation is the substitution of a less for a greater punishment, by authority of law, and may be imposed upon the convict without his acceptance, and against his consent." (20 R. C. L. 530; *Biddle v. Perovich*, 274 U. S. 480).

0-690 To: Forrester Hancock, Criminal District Attorney, Waxahachie
Date: April 28, 1939

The commissioners' court is without authority to make appropriations of public money to any library controlled and operated by private individuals however worthy the cause may be. Constitution of Texas, Arts. XVI, Sec. 6; Art. III, Sec. 50; Art. III, Sec. 51; Art. III, Sec. 52; Art. XI, Sec. 4; Art. VIII, Sec. 3.

0-691 To: A. M. Aiken, Jr., Chairman, Committee on Education, Senate
Date: May 2, 1939

Elementary pupils of underlying elementary school districts are not entitled to \$2.00 per month per pupil for transportation aid as pupils of a rural high school district for transportation to or between their respective elementary districts, but would be entitled to \$1.00 per pupil per month under Sec. 11, Acts 1937, Chap. 474, p. 1259, commonly known as the "Rural Aid Law." High School pupils of the rural high school district having 100 square miles or more would be entitled to \$2.00 per pupil per month as transportation aid.

0-692 To: Mrs. Faye Stewart, President, State Board of Hairdressers and Cosmetologists.
Date: May 6, 1939

If a person, firm or corporation conducts a school of beauty culture, enrolling only licensed operators who receive compensation for their services, and if such school charges a fee or remuneration for the teaching and training of persons in the act of hairdressing and cosmetology, then such person, firm or corporation is subject to the terms of Art. 734b, P. C., and must pay \$100.00 for a certificate of registration from the State Board of Hairdressers and Cosmetologists.

0-695 To: W. P. Sexton, County Attorney, Orange County
Date: May 1, 1939

Under Article 3899, R. C. S., a county attorney on a fee basis should be reimbursed for traveling expenses if such funds are available from his excess fees of office; and although the statutes are silent as to the rate per mile to be allowed en route to and from the justice precincts in the conduct of his office, he is entitled to all actual and necessary expenses so incurred.

0-697 To: Thos. A. Wheat, County Attorney, Liberty County
Date: May 2, 1939

1. The county assessor-collector of taxes does not have the authority to appoint a deputy assessor-collector of taxes in and for a town or city other than the county seat which has a population of less than seven thousand (7,000) inhabitants according to the last preceding Federal Census. Art. 7256, R. C. S.
2. A deputy tax-assessor-collector is an officer within the meaning of Sec. 40 of Art. XVI of the Texas Constitution and is thereby prohibited from holding more than one office of emolument. Consequently, he may not hold such office and at the same time serve as assessor-collector of taxes for an independent school district.

0-698 To: Jack Weich, County Attorney, Cameron County
Date: May 8, 1939

In an absence of a contrary statute governing the particular case, the four year statute of limitations (Art. 5527, R. C. S.) is applicable to actions or suits on bonds issued by water improvement, water control and improvement, drainage districts and bonds and securities of all other political subdivisions within the State, and the statute begins to run in favor of the district on the due date of the bond or coupon in question. *Rockwall Co. v. Roberts Co.*, 128 S. W. 369. However, the statute must be especially pleaded as a defense. *City of Houston et al v. Chapman*, 123 S. W. (2d) 652.

0-700 To: E. H. Thornton, Jr., Chairman, Committee on
Appropriations, House of Representatives
Date: May 5, 1939

1. Fees and taxes levied and collected and placed in special funds and accounts are not available for use by the designated state departments unless the same are specifically appropriated to the departments each biennium. Art. VIII, Sec. 6, Constitution of Texas. *Johnson v. Ferguson*, 55 S.W. (2d) 153.
2. If by general statute fees and taxes derived from a particular source or sources are devoted to a certain purpose, such fund may not be appropriated to other and different uses. Such special funds being earmarked by general statutes for particular uses and collected for such purpose cannot be diverted to other uses. *Johnson v. Ferguson*, supra. Consequently, in the event the legislature fails to appropriate moneys in such special funds, such moneys collected will not revert to the General Revenue Fund. Chap. 304, p. 678, General and Special Law, 41st Leg., 1929.
3. The legislature has the authority to place limitations upon the use of fees and taxes levied and collected for particular purposes; subject to the qualification, however, that an appropriation bill cannot repeal or modify a general law.

0-703 To: Chas. R. Martin, County Auditor, Harrison County

Date: May 13, 1939

The provisions of Article 3897, R. C. S., requiring that fees earned but not collected by the officer during the fiscal year be reported, are mandatory and must be complied with before the justice of the peace is entitled to retain under the provisions of Article 3892, R. C. S., such delinquent examining trial fees.

0-704 To: Chas. R. Martin, County Auditor, Harrison County

Date: May 1, 1939

Examining trial fees or accounts of precinct officers who are compensated on a fee basis in counties where the county officials are compensated on an annual salary basis should be paid by the county out of the Officers' Salary Fund.

0-705 To: Gaynor Kendall, State Board of Education

Date: May 9, 1939

It is the right and duty of the State Treasurer to require and demand that interest be paid on past due interest coupons in which provision is not made in the coupon for payment of interest thereon after maturity on all municipal securities held and owned by the permanent free school fund, after presentation, demand and refusal has been made. This interest would be computed at the legal rate of 6% per annum from the date of maturity of the interest installment for which the coupon was given.

0-706 To: Gordon C. Cass, County Attorney, Lampasas
County
Date: May 4, 1939

The farmer who uses his motor vehicle registered with a commercial farm license regularly and continuously for farm purposes as outlined in the statutes, and on Sunday takes his family to church or drives to a neighbor's house, may do so without violating Art. 6675a, Sec. 6a, R. C. S.

0-707 To: E. L. Shelton, County Auditor, Johnson County
Date: May 1, 1939

1. A county commissioner may be violating Art. 2372c, V. A. C. S., when he uses county machinery for terracing farms and doing special contract work with road machinery of the county without the consent of the commissioners' court. However, by doing so the commissioner does not violate any penal statute of the State.
2. A county commissioner does not violate any penal statute of this State in using a pick-up truck bought and paid for out of county funds in the administration of his business as commissioner and in going to and from court meetings. Art. 2372f, R. C. S.

0-709 To: T. M. Trimble, First Assistant State Superintendent
Date: May 8, 1939

It is not a violation of the Nepotism statute, Art. 432, P. C., for the board of trustees appointed by a city commission to elect a daughter of one of the commissioners to a position as teacher in the city school system.

0-710 To: T. M. Trimble, First Assistant State Superintendent
Date: May 8, 1939

1. H. B. No. 234, Chapter 43, page 153, 38th Leg., R. S., effective March 24, 1923, creating the Springlake Independent School District effectively detaches a portion of the territory contained in the Sudan Independent School District. *Lyford Independent School District v. Willamar Independent School District* (Tex. Com. App.) 34 S. W. (2d) 854.
2. The Sudan Independent School District was first created by special act of the Legislature. Later this act was amended to more clearly define the boundaries of such district and to validate a \$40,000.00 bond issue. Subsequently, the Springlake Independent School District was created, a portion of which district was formerly within

the Sudan District. The act creating the Springlake District expressly provided for the assumption by such district of its pro rata part of bonded indebtedness of the Sudan District although no action has been taken for the assumption of any part of the indebtedness. Nor has the county board of trustees taken any action in this connection as authorized by Art. 2742b, R. C. S. It is the duty of the county board of trustees to call an election within the Springlake District for the assumption of its pro rata share of the bonded indebtedness of the Sudan District. Should this assumption be voted down the county board of trustees should certify this fact to the commissioners' court as directed by Art. 2742b, supra. The commissioners' court shall then "cause to be assessed and collected from the taxpayers of such districts as they existed before the changes were made, the tax necessary to pay the interest, the sinking fund and discharge the principal of such indebtedness as it matures." Art. 2742b, R. C. S. *Lyford Independent School District v. Willamar Independent School District* (Com. App. of Tex.) 34 S. W. (2d) 854.

3. If territory is detached from one independent school district and added to another, the district to which the property is detached has not legally enforceable interest in any of the physical properties of the district from which the territory was detached. Such facts may be taken into consideration by the commissioners' court or county board of trustees in 20 S. W. (2d) 214, affirmed by Commission of Appeals, 34 S. W. (2d) 837. *Lyford I. S. D. v. Willamar I. S. D.*, 34 S. W. (2d) 854.

0-714 To: Geo. H. Sheppard, Comptroller of Public Accounts
Date: May 1, 1939

The Comptroller has no authority to issue a warrant to pay the funeral expenses of a deceased janitor of the State Senate.

0-715 To: O. N. Stevens, President, Nueces River Conservation & Reclamation District, Corpus Christi
Date: May 16, 1939

The Nueces River Conservation and Reclamation District has no express or implied authority to charge for engineering data, estimates and other information furnished to the several counties within said district. Acts 1935, 44th Leg., 1st Called Session, p. 1660, chapter 427.

0-716 To: J. L. Crosthwait, County Auditor, Dallas County
Date: May 2, 1939

The Commissioners' Court of Dallas County, Texas, may set the salaries of the precinct officers of the county at a reasonable sum not to exceed \$4,000.00 each. Sec. 19, Art. 3912e, R. C. S. There is no conflict between such Article and Art. 3912e-1, Sec. (c), which provides for *the retention of maximum fees* of \$4,500.00, when such officers are on a *fee basis*.

0-717 To: A. A. Miller, County Attorney, Newton County
Date: May 2, 1939

A county treasurer is not entitled to commissions under Art. 3941, R. C. S., on moneys transferred from one fund to another county fund inasmuch as this would not be a collection of money or money paid out of the treasury. However, when such money is actually paid out of the county treasury from the newly created fund, the county treasurer is entitled to receive his commission.

0-718 To: O. Kennedy, County Attorney, Bee County
Date: May 1, 1939

The commissioners' court may not employ an architect who is the son of the county judge to supervise improvements to be made on the county court house, when such improvements are to be paid for with county funds. Arts. 432, 433, P. C.

0-719 To: Quincy Hawkins, County Auditor, Henderson
County
Date: May 2, 1939

This opinion holds in accordance with Opinion 0-505 that a county is not legally liable to pay interest on script warrants issued to pay monthly accounts.

0-721 To: J. C. Hamilton, County Auditor, Ector County
Date: May 10, 1939

S. B. No. 97, raising the salaries of county commissioners and fee officers in counties within a designated population bracket, applies only to Ector County and is unconstitutional as a special or local law. Sec. 56, Art. 3, Constitution of Texas. See also Opinion 0-292.

0-722 To: Fred T. Porter, County Attorney, Kaufman
County
Date: May 27, 1939

A special county judge whether serving in a general capacity or in a probate capacity only should be compensated on the following basis: the annual salary of the judge of the county court divided by 365 and the quotient multiplied by the number of days actually served by such special judge. This compensation should be paid from the Officers' Salary Fund of the County. Articles 1933 and 1932 R. C. S.; Article 557, C. C. P.; Article 3912e, V. A. C. S.

0-723 To: Chas. S. McMillan, County Attorney, San Augustine County
Date: May 10, 1939

The fact that the employer is a city does not exempt city employees, otherwise covered by the statutory definition "chauffeur," from procuring a chauffeur's license and paying the proper fee therefor, as required by Article 6687a, Vernon's Annotated Civil Statutes.

0-725 To: Jay Sam Levey, Assistant District Attorney, San Antonio
Date: May 9, 1939

None of the following names submitted are sufficient to put the public upon notice as to the names of the true owners of the businesses and each should be registered under the provisions of the assumed name statute, Article 5924, R. C. S.: (1) Gene Irwin Service Station (owned and operated by Eugene Irwin); (2) Pavlue Grocery and Market (owned and operated by J. E. Pavlue); and (3) John's Garage (owned and operated by John Mitchell).

0-726 (Conference Opinion 3050)
To: R. Emmett Morse, Speaker, House of Representatives
Date: May 13, 1939

H. B. 420 (Small Loan Bill) is unconstitutional (1) in that it violates Art. XVI, Sec. 11 of the Constitution of Texas by attempting to authorize interest of more than ten per cent per annum; (2) in that it is a special law "fixing the rate of interest" in violation of Art. III, Sec. 56, Texas Constitution; (3) and in that it is discriminatory in violation of the "Equal Protection" clause of the Federal Constitution (14th amendment to the U. S. Const.) and Texas Constitution, Art. I, Sec. 3; Art. I, Sec. 19; and Art. III, Sec. 56.

0-727 To: Tom A. Craven, County Auditor, McLennan County
Date: May 4, 1939

The salaries of the road superintendent of McLennan County and his assistants and his office expenses should be paid out of the general fund of McLennan County.

0-728 To: Roy L. Hill, County Attorney, Runnels County
Date: May 6, 1939

In a case in which delinquent ad valorem taxes are due on a building, the State and county do not have a lien on the fire insurance money on the building when it is destroyed by fire. Art. VIII, Sec. 15, Constitution of Texas; Art. 7172, R. C. S. *Gassaway v. Browning*, 175 SW 481; *Hage v. Garcia*, 296 SW 982.

0-729 To: C. E. Weaver, County Auditor, Nacogdoches
County
Date: May 5, 1939

When the commissioners' court by virtue of the authority vested in it under Art. 1646, R. C. S., officially determines that an auditor is a public necessity in the dispatch of the county business and enters an order upon the minutes of the commissioners' court fully setting out the reasons and necessity for an auditor, causes such order to be certified to the district judge having jurisdiction in the county, and the judge considers the reasons set forth to be sufficient and appoints the auditor in conformity with Art. 1647, R. C. S., the office of county auditor is then created in such county and the tenure of such office is for a period of two years.

Moreover, it is not necessary that the commissioners' court enter such order every two years; and such office may not be abolished by the commissioners' court but only by the district judge after the expiration of one year when it is clearly shown that such auditor is not a public necessity and his services are not commensurate with his salary received. Art. 1646, R. C. S.

0-731 To: Geo. H. Sheppard, Comptroller of Public Ac-
counts
Date: May 23, 1939

A county attorney *pro tem* is not required to take the oath of office required by Article XVI, Section 1, Constitution of Texas, as it was evidently not the legislative intention that Article 31, Code of Criminal Procedure, should provide an office requiring the incumbent to take the oath.

0-732 To: Thos. A. Wheat, County Attorney, Liberty Coun-
ty
Date: May 24, 1939

A privately owned passenger motor vehicle used to deliver mail by a rural free delivery mail carrier for the Federal Government and also as a passenger car comes within the scope of the definition of a "commercial motor vehicle" under subdivision (i) of Article 6675a-1, V. A. C. S., and should be registered as a commercial motor vehicle and bear commercial motor vehicle license plates.

0-733 To: E. H. Thornton, Jr., Chairman Appropriations
Committee, House of Representatives
Date: May 2, 1939

With further reference to Opinion 0-632 rendered April 14, 1939, the Legislature is without authority to appropriate \$75,000.00 in payment of a deficiency warrant issued by the Governor for the purpose of erecting a major building on the campus

of John Tarleton College. There was no pre-existing valid law authorizing the erection of this building at the time of the issuance of the Governor's deficiency warrant. Consequently, the Governor was acting without authority in issuing the warrant, and an appropriation by the Legislature for the purpose of paying the warrant would be violative of Art. III, Sec. 44 of the Constitution of Texas. See also Arts. 112, P. C., and 2613a-1, as amended, R. C. S.

0-734 To: Tom L. Beauchamp, Secretary of State
Date: May 3, 1939

1. It is not necessary that the Secretary of State be absent from the city before the Assistant Secretary of State would be authorized to act. In the event the Secretary of State is absent or *unable to act for any reason*, the Assistant Secretary of State is authorized by the statutes (Art. 4340, R. C. S.) to perform *all* the duties required by law to be performed by the Secretary of State. Such inability to act may be brought about by mere absence from the office or volume of other work commanding the Secretary of State. *Pfeffer v. Mahnke, et al*, 260 S. W. 1031.
2. Whenever the Assistant Secretary of State may affix his signature to any document by reason of the happening of the conditions mentioned in the statute (Art. 4340, R. C. S.), he should sign as "Assistant Secretary of State." There is no provision in the statute for such an officer as "Acting Secretary of State," and in no instance should the Assistant Secretary of State sign in that capacity.

0-735 To: Ross Hardin, Chairman, Committee on Counties,
House of Representatives
Date: May 5, 1939

H. B. No. 1045 which bill would give the commissioners' court authority to fix the salaries of certain county and district officers in all counties having a population of not less than 30,900 nor more than 31,000 inhabitants according to the last preceding Federal Census unconstitutional and void as a special or local law. Sec. 56 of Art. III, Constitution of Texas. *City of Fort Worth v. Bobbitt*, 36 S. W. (2d) 470; *Bexar County v. Tyman*, et al, 97 S. W. ((2d) 567.

0-736 To: Henry Hull, Chairman, Subcommittee, Appropriations, House of Representatives
Date: May 19, 1939

The constitutionality of H. B. 589, making appropriations to pay past due rent on armories under lease to the National Guard of the State of Texas, depends upon the facts and circumstances of each lease contract, and sufficient facts are not presented to make that determination.

0-739 To: James E. Kilday, Director, Motor Transportation Division, Railroad Commission of Texas
Date: May 19, 1939

The Railroad Commission of Texas has no authority summarily to change Special Commodity Permit No. 12410 issued to Central Forwarding, Incorporated, to remove certain restrictions and place the permit in conformity with the original Class B. Permit No. 5182 issued in the name of Central Freight Lines, Incorporated. H. B. No. 654, Chapter 314, p. 698, General and Special Laws, 41st Leg., R. S., 1929; Article 911b, R. C. S., as amended. The procedure to be followed in amending this permit would be the same followed in obtaining a new permit of the same nature.

0-742 To: Loyd R. Kennedy, County Attorney, Cochran County
Date: May 6, 1939

In a special county commissioner election to be held, the general election having been held void by the district court, the only names entitled to be printed on the official ballot are the names of those persons who have fulfilled the statutory requirements set out in Article 2978, et seq., V. A. C. S.; and a person whose name was merely written in at the first void general election, who is not a party nominee and who has not complied with the statutes relating to non-partisan or independent candidates is not entitled to have his name printed on the ballot in the special election. *Bounds v. McCallum*, 52 S. W. (2d) 1047.

0-743 To: Chas. H. Theobald, County Attorney, Galveston County.
Date: May 9, 1939

In view of Articles 3121, 2975 and 2996, R. C. S., the tax assessor-collector must deliver to the various election boards, such as election boards of common school districts, independent school districts and municipal election boards and all other boards except primary election boards, separate certified poll tax and exemption lists of each precinct, and the assessor-collector cannot legally charge for furnishing such lists except the \$5.00 fee provided in Article 3121, R. C. S., which applies only to primary elections.

0-745 To: Tom L. Beauchamp, Secretary of State
Date: May 18, 1939

The filing of a renewal resolution and certificate of the Weatherford, Mineral Wells and Northwestern Railroad Company is an amendment to its original charter and, although none of the articles relating to railroads make any provisions for the

filing fee of the renewal of a charter, since this is an amendment, the filing fee is fixed by the terms of Article 3914, R. C. S.

Since this renewal is an amendment of the charter of the Weatherford, Mineral Wells & Northwestern Railroad Company, it is not necessary that the Secretary of State submit the renewal resolution to the Attorney General for his examination and approval under Article 6263, R. C. S.

0-750 To: E. S. Foreman, County Auditor, Jefferson
County
Date: May 16, 1939

In accord with Opinion 0-655 the commissioners' 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.

Election officials in school trustee elections, notwithstanding that they also hold the election for county trustees, should be paid \$1.00 each for their services. Article 2746, R. C. S.

In a joint election to elect district trustees and county school trustees, the common school district trustees may appoint three persons for each voting box of the district to hold the election who shall be paid \$1.00 each for their services. Article 2746, R. C. S.

0-751 To: O. J. S. Ellingson, Manager, Texas Prison Sys-
tem, Huntsville
Date: May 13, 1939

It is within the power of the Texas Prison Board and the General Manager of the Texas Prison system to discharge an employee at any time, and a resolution passed by the Board (a copy of which was sent to the employee) and written notice from the general manager to the employee is sufficient to effect such discharge.

0-752 To: Robert F. Cherry, County Attorney, Bosque
County
Date: May 16, 1939

The commissioners' court in counties operating under the general road law of this State are not empowered or authorized to buy automobiles, pick-ups or trucks for the county to be used by the commissioners in the performance of their duties as county commissioners, nor is the county authorized to pay the expenses of such commissioners, incurred by them in the oper-

ation of their own private automobiles in the conduct of their office. Articles 2350 to 2350 (m), R. C. S.

0-755 To: Tom A. Craven, County Auditor, McLennan
County
Date: May 8, 1939

Where a conviction is had in the justice court and only a part of the costs are collected, the sum collected should be prorated between the officers and the county in the same proportion as to which each would have been entitled to receive therefrom had all costs been collected, Article 949, C. C. P. However, since the justice of the peace is paid by the county, his trial fee should not be considered in the proration. Articles 1052, 1054, C. C. P.

0-757 To: Sidney Lee, County Attorney, Bowie County
Date: May 24, 1939

A county traffic officer employed under Article 6699, V. A. C. S. does not possess a legal right to weigh trucks for purpose of ascertaining whether they were loaded in excess of 7,000 pounds in violation of Article 827a, V. A. P. C. *Head v. State* (1931) 96 S. W. (2d) 981; *DeShong Motor Freight Lines, Inc., v. Hopkins, et al* (1937) 99 S. W. (2d) 1033.

0-759 To: S. L. West, County Auditor, Van Zandt County
Date: May 9, 1939

The one-half of one per cent collected by the county judge from guardians and administrators in compliance with Article 3926, R. C. S., comes within the terms "fees and commissions" in the Officers' Salary Act, Article 3912e, R. C. S., and should be deposited in the Officers' Salary Fund when the county judge is on a salary basis. In such case, the county judge would not be entitled to retain the fee. Section 3, Article 3912e, R. C. S.

0-760 (and supplemental opinion)
To: Bascom Giles, Commissioner, General Land Office
Date: May 9, 1939

Land was sold by the State to W. in 1904 and forfeited for non-payment of interest in 1911. After forfeiture the land was sold to G. in 1912, forfeited in August, 1914, reinstated in December, 1914, and again forfeited for non-payment of interest in 1916. The former sale to W. forfeited in 1911 was reinstated in 1936. After the sale to G. had been declared forfeited for non-payment of interest, W. then had the right of reinstatement, if no other person, at the time of the application by Williams for reinstatement, had any vested right to purchase the land. Therefore, the reinstatement to W. on December 22, 1936, was not erroneous and should not be set aside by the Land

Commissioner. The provision in Article 5326, R. C. S., 1925, for reinstatement, *provided that no rights of third persons may have intervened* means a present existing bar to reinstatement—an existing, vested right, enforceable at the time by the party owning such right. *Gulf Production Company v. State*, 231 S. W. 124. The mere right of reinstatement without having exercised that right by making a written request for reinstatement and paying the money into the Treasury as required by Article 5326, is not such right as will preclude reinstatement of the original forfeiting owner. *Cruzan v. Walker*, 119 Tex. 189, 26 S. W. (2d) 908.

0-761 To: T. M. Trimble, First Assistant State Superintendent
Date: May 18, 1939

Although a majority of the board of trustees of an independent school district is necessary to constitute a quorum (which would ordinarily be four members), Articles 14 and 2779, R. C. S., the three members of the New Boston Independent School District remaining after four trustees' resignations had been tendered were authorized to appoint successors to those resigning; and when three of these appointees refused to accept their appointments and qualify, the four then members of the board were authorized to proceed to appoint three members to the vacancies which had not been filled. Article 2777, R. C. S.; Article XVI, Section 17, Constitution of Texas. The present board is now composed of seven *de jure* members. *Glass v. City of Hopkinstown*, 9 S. W. (2d) 117; *Douglas v. Pittman*, 39 S. W. (2d) 979; *Walker v. Walker*, (T. C. A. 1922) 241 S. W. 525.

0-763 To: J. P. Bryan, County Attorney, Brazoria County
Date: May 16, 1939

Road District No. 26 of Brazoria County may issue time warrants to construct roads in their district and to build approaches to a bridge; however, their issuance must be submitted to a vote of the people and sustained by a two-thirds majority of the resident property taxpayers voting thereon, and likewise at such time a sufficient levy shall be made and collected to pay the interest thereon and provide a proper sinking fund for the redemption of the warrants, and otherwise the issuance of the same must be strictly in accordance with the Constitution and laws of the State of Texas. Section 52, Article III, Constitution of Texas; Articles 752a, et seq., R. C. S.

0-768 To: Esco Walter, County Attorney, Taylor County
Date: May 13, 1939

If a state highway patrolman arrests a defendant in a misdemeanor case and brings the defendant before the justice of the peace and the defendant pleads guilty and is assessed a fine,

the justice of the peace should not tax an arrest fee against the defendant. Article 1065, C. C. P. See also Opinions 0-106 and 0-359.

0-771 To: W. Lee O'Daniel, Governor of Texas
Date: May 8, 1939

H. B. 872, conferring limited jurisdiction on the county court in misdemeanor cases does not violate any constitutional provision in reference to the jurisdiction of county courts. Article V, Section 22, Constitution of Texas.

0-772 To: T. M. Trimble, First Assistant State Superintendent
Date: May 13, 1939

When a consolidation of a common school district with an independent school district was attempted and trustees of the common school district purported to qualify for the consolidated district, which consolidation was subsequently held void by the district court, the effect of the judgment was to hold that the districts were never in fact consolidated and the three members continued as trustees of the common school district as though no election had been held to consolidate. Consequently, only one new trustee should have been elected in April (Article 2745, R. C. S.) and an election electing three new trustees was a nullity. *Smith v. Morton Independent School District* (T. C. A. 1935, writ dismissed) 85 S. W. (2d) 853. The three former trustees constitute *de jure* members of the Board fully qualified to act as such with one vacancy subject to be filled by appointment by the county board of school trustees. Texas Constitution, Article XVI, Sec. 17; Art. 2745, R. C. S.

0-773 To: Edgar Pfeil, County Attorney, Guadalupe County
Date: May 11, 1939

A deputy sheriff who preserves the peace at a public celebration and dance would be acting within the scope of his official duties and would not be entitled to receive extra compensation from the county or from third persons. His only compensation for performing his duties must be that prescribed by law.

0-774 To: Chas. S. McMillan, County Attorney, San Augustine County
Date: May 20, 1939

Scrip issued by a county for the purchase of gasoline and machinery to be used in road construction may not be used in payment of road and bridge taxes. *Cooley on Taxation*, 4th Ed., Section 1252; 26 R. C. L. 337; 61 C. J. 963; *Dallas Joint*

Stock Land Bank v. Ellis County Levee Improvement District No. 3, 55 S. W. (2d) 227. Articles 6790, et seq., R. C. S.

0-775 To: Don D. Parker, County Auditor, Eastland County
Date: May 12, 1939

Article 4484, R. C. S., does not govern the management, control and operation of a city-county hospital, but the management, control and operation of such hospitals operated jointly by a city and county is vested in the municipal and county authorities jointly, and by mutual agreement they may provide for the management, control and operation of such hospitals and prescribe the mode and manner in which the operating expense of a jointly owned hospital should be handled and paid and provide for the keeping of proper records of all its proceedings and require a direct and detailed report of the operation of such hospital from the party or parties operating the hospital together with suitable recommendations and such other matters as may be required of them. Articles 4434, 4492, R. C. S., *Glasscock et al, v. Wells, et al*, 171 S. W. 782.

0-777 To: Joe C. Gladney, Criminal District Attorney, Henderson
Date: May 13, 1939

Merely permitting an instructor in music of a consolidated school district related within the prohibited degree to one of the trustees of such district to use the music room of such school is not an appointment in violation of the Nepotism Law, Article 432, P. C., when such instructor is paid no compensation.

0-779 To: Carl Periman, County Attorney, Hall County
Date: May 24, 1939

It is not the duty of a county or road precinct to carry employer's liability insurance for the protection of road workmen or the county. 45 Tex. Jur. 455; Article III, Section 59, Texas Constitution.

0-780 To: Parks E. McMichael, County Attorney, Cass County
Date: May 10, 1939

It is a violation of the Nepotism Law, Articles 432, 433, P. C., for the board of trustees of an independent school district to employ the son of one of the members of the board to operate a school bus.

0-781 To: G. M. Mann, County Auditor, Hill County
Date: May 16, 1939

The expense of conducting a county-wide road bond election should be charged to the general fund of the county. Article 2996, R. C. S.

0-784 To: E. P. Jennings, County Auditor, Hardin County
Date: May 16, 1939

A county commissioner, supervising the expenditure of bond funds, may not employ and pay persons from this fund related to him within the prohibited degree under Article 432, Penal Code, the Nepotism Statute.

0-785 To: C. L. Kuykendall, Board of Examiners, State
Department of Education
Date: May 26, 1939

Since the funds of the Board of Examiners (accruing from fees placed in the general revenue fund) have been exhausted, the Comptroller of Public Accounts may issue deficiency warrants only at his peril that the fees collected between the present date and September 1, 1939, will be sufficient to pay these warrants. Otherwise, the warrants will have been issued without authority of law and in contravention of Article VIII, Section 6 of the Texas Constitution. Articles 2877, 2879, R. C. S. S. B. 138, Chap. 504, General and Special Laws of Texas, R. S., 45th Leg. See also Opinion 0-796.

0-788 To: W. Lee O'Daniel, Governor of Texas
Date: May 10, 1939

It is both necessary and proper for the Governor of Texas to sign and authorize the lithographing of his signature to State of Texas Treasury Certificates and interest coupons attached thereto as provided by resolution of the Texas Old Age Assistance Commission pursuant to H. B. 179, 46th Legislature.

0-789 To: Richard Spinn, County Attorney, Washington
County
Date: May 11, 1939

A member of the commissioners' court cannot resign and be appointed by the remaining commissioners to fill a vacancy in the office of county judge. Under Article XVI, Section 17 of the Constitution, the commissioner must serve until his successor qualifies. Since no one is authorized to appoint his successor except the county judge, the vacancy in that office must be filled before the commissioner can effectuate his resignation. Article 2341, R. C. S. See also Opinion 0-410.

0-790 To: Frank Wright, County Auditor, Fannin County
Date: May 20, 1939

County employees as county road hands while driving trucks belonging to the county and on county business are chauffeurs within the meaning of Section 1 (g) of Article 6687a, Vernon's Annotated Civil Statutes, and are obliged to obtain chauffeur's licenses.

0-791 To: E. B. Lewis, County Attorney, Cherokee County
Date: May 12, 1939

The employment as a teacher in an independent school district of the daughter of a half-sister of one of the trustees in such district would be in violation of the Nepotism Law, Article 432, P. C., since the trustee is related to his half-niece by consanguinity in the second degree.

0-792 To: Sam Bain, County Attorney, Leon County
Date: May 16, 1939

The owner of a building who proposes to place two pool tables and a domino table therein, and form a club of members who would pay dues of approximately \$1.00 each per month and not by the game, a large part of the money going to a person to take care of the tables and janitor service, with nothing else in the building and nothing for sale, would be operating and maintaining a pool hall as defined by Article 4668, R. C. S., and would be in violation of Article 653, P. C. of Texas.

0-793 To: Thos. R. Chandler, County Attorney, Robertson County
Date: May 15, 1939

The prohibited degree of relationship exists under the Nepotism law when the uncle of a teacher's wife sits as a member of the county board of school trustees, and a contract made with the teacher by the Board under these circumstances is void. Article 432, P. C. *First National Bank v. Neal*, 10 S. W. (2d) 408; *Langever v. Doyle*, 44 S. W. (2d) 1050; *Hennessey v. Association*, 282 S. W. 791.

If a trustee does not participate in the proceedings for the appointment of the teacher under the circumstances related above, such trustee is not liable to prosecution under the Nepotism Law. However, the remaining members of the board so participating are acting in violation of the Nepotism law. Article 432, P. C.

0-796 To: N. J. Dartez, Secretary, State Board of Barber Examiners
Date: May 17, 1939

The State Board of Barber Examiners may not issue vouchers and request warrants thereon after September 1, 1939, against

revenues in the State Board of Barber Examiners' Fund collected after that date, but to pay salaries, traveling expenses and other operating expenses incurred prior to September 1, 1939. S. B. No. 138, Chapter 504, Acts, R. S., 45th Leg.; Article VIII, Section 6, Constitution of Texas; Article 12, R. C. S. However, obligations may be incurred and liabilities contracted for by the State Board of Barber Examiners during any fiscal year even though funds to pay warrants drawn in payment thereof are not at the time actually in the State Board of Barber Examiners' Fund when it is reasonably anticipated that prospective revenues sufficient to meet such obligations will come into such special fund during the *same fiscal year*, ending in this case August 31, 1939. *Ferguson, et al v. Johnson, et al*, 57 S. W. (2d) 372.

0-797 To: J. C. Patterson, County Attorney, Knox County
Date: May 17, 1939

An order passed by the commissioners' court levying an "occupation tax," as authorized under the provisions of Article 7048, R. C. S., is insufficient to authorize a levy and collection of license fees provided for under the provisions of Article 666-15 (a) (Texas Liquor Control Act), Vernon's Annotated Penal Code.

0-800 To: Hazel H. Beckham, Executive Secretary-Director, State Commission for the Blind, Austin
Date: May 12, 1939

The Legislature of Texas has ample authority to authorize the State Board of Control to allow a blind person to operate a cigar, cigarette, magazine and confectionery stand in the State Capitol. *Conley v. Daughters of the Republic*, 156 S. W. 197. However, this practice is at present prohibited by Article 668, R. C. S.

0-801 To: Geo. H. Sheppard, Comptroller of Public Accounts
Date: May 20, 1939

The Comptroller of Public Accounts is authorized to issue refund warrants against the suspense fund of the State Board of Cosmetology for refund of application and license fees for beauty shop operators since the certificates in each case have not been granted and the applications for license and renewal of license have not been acted upon. Article 734b, Penal Code.

0-803 To: O. Kennedy, County Attorney, Bee County
Date: May 19, 1939

Abstract books constitute "personal property" within the meaning of Articles 7145 and 7147, R. C. S., and are subject to

taxation. 61 C. J. 192, 26 R. C. L. 138, 1 R. C. L. 90. *State v. St. Paul Abstract Company*, 196 N. W. 932; *Leon Loan and Abstract Company v. Equalization Board of Leon, et al*, 53 N. W. 94; *Booth Hanford Abstract Company v. Phelps*, 36 P. 489, 23 L. R. A. 864; *Washington Bank of Walla Walla v. Fidelity Abstract & Security Company*, 15 Wash. 487, 37 L. R. A. 115.

0-805 To: Jack Borden, County Attorney, Parker County
Date: May 20, 1939

Neither the members of the Department of Public Safety nor other peace officers would be precluded from enforcing the provisions of Article 6675a, et seq., R. C. S., and Article 827a, et seq., P. C., relating to failure to register properly a motor vehicle merely because of the tax collector's erroneous issuance of a license receipt for use in connection with a motor bus having four wheels and with gross weight exceeding 22,000 pounds.

0-807 To: L. P. Heard, County Auditor, Bell County
Date: May 19, 1939

Under the provisions of Article 3912e, V. A. C. S., the Officers' Salary Law, all county and precinct officers who are compensated on a salary basis are required to collect all costs in civil cases by the State and all fees, commissions and costs from private parties who are required by law to pay such fees, commissions and costs, and the same must be deposited in the Officers' Salary Fund of the county.

0-809 To: Walter C. Woodward, Chairman, Board of Insurance Commissioners
Date: May 18, 1939

The payment of capital stock of an insurance company with notes secured by first mortgages on unincumbered real estate in Texas is valid, conditioned upon a strict compliance with all the provisions contained in Article 4705, R. C. S.; Article XII, Section 6, Constitution of Texas; Articles 4717, 4752, R. C. S. *General Bonding & Casualty Insurance Company, et al v. Moseley, et al*, 222 S. W. 361; *Prudential Life Insurance Company of Texas v. Pearson*, 222 S. W. 967. (This opinion expressly overrules the opinion of this Department, dated April 22, 1938, by Mr. Richard Brooks to the contrary.)

0-810 To: Thos. R. Chandler, County Attorney, Robertson County
Date: May 19, 1939

Article 3899, R. C. S., as amended, does not authorize the commissioners' court to allow to district and county officers expenses incurred in attending their respective officers' conventions. Such expenses, though reasonable, would not be "necessary in the

proper and legal conduct of their offices." *State v. Carnes*, 106 S. W. (2d) 397.

0-813 To: Joe Bailey Humphreys, County Attorney, Houston County
Date: May 17, 1939

It is incumbent upon the county to pay justices of the peace the fees due them under Article 1052, C. C. P., from the general fund of the county. *Ex parte Kelley*, 10 S. W. (2d) 728; *Clark & Courts v. San Jacinto County*, 45 S. W. 315. Article 1629, R. C. S., does not empower the commissioners' court to create separate funds from which to pay the justices of the peace for their fees due them under Article 1052, C. C. P.

0-824 To: Bert Ford, Administrator, Texas Liquor Control Board
Date: May 15, 1939

Section 20 of Article XVI, Constitution of Texas, as amended in 1919 (prohibiting the sale of intoxicating liquors) has the effect of repealing all existing legislation whether it be in the form of local option statutes or charter amendment statutes, and upon the adoption of this amendment on May 24, 1919, Section 62 of the Charter of the City of Galveston (Acts, R. S., 31st Leg., H. B. 368, Ch. 88, Local and Special Laws) was repealed and of no further force and effect. *United States v. Yuginovich*, 41 Sup. Ct. Rep. 551; *Cone v. State*, 236 S. W. 486.

0-826 To: A. W. Lowery, County Attorney, Nacogdoches County
Date: May 19, 1939

The Legislature has fixed the salary of county auditors appointed under Articles 1645 and 1646, R. C. S., by the provisions of Article 1645, R. C. S. As applied to Nacogdoches County such salary amounts to fifteen hundred dollars per annum. Since the district judge has reappointed the county auditor, the commissioners' court should comply with the plain mandatory provisions of Article 1647, record in its minutes the certified copy of the minutes of the district court appointing the auditor and enter an order directing the payment of the auditor's salary each month as it accrues, as soon as the auditor has qualified by taking the oath and executing and filing his bond. See also Opinion 0-729.

0-828 To: O. E. Gerron, County Attorney, Ector County
Date: May 20, 1939

The county judge is not entitled to a fee for holding hearings on applications for beer and wine retailers' permits under the Texas Liquor Control Act, Article 666-1 et seq, V. A. P. C. (H. B.

No. 77, Acts 2nd C. S., 44th Leg.) and the county clerk is not entitled to a fee for filing such applications and for his clerical work in connection with such applications, since such fees have not been so provided by the Legislature.

0-829 To: Julian Montgomery, State Highway Engineer
Date: May 19, 1939

Neither of the divorced parents of a deceased employee of the Texas Highway Department may waive, relinquish or assign his claim to the proceeds from Workmen's Compensation Insurance from the Texas Highway Department in favor of the other parent. Article 8306, R. C. S. *Texas Employers Insurance Association v. Williams, et al*, 57 S. W. (2d) 218; 47 A. L. R. 799.

0-830 To: W. Lee O'Daniel, Governor of Texas
Date: May 25, 1939

H. B. 194, as amended and re-enacted by the Legislature, popularly known as "The Barbers' Bill" is unconstitutional in that the means adopted bear no real and substantial relation to the legitimate end sought to be achieved by the act—the protection or the welfare of the public as a whole; consequently it cannot be sustained under the police power of the State and is in violation of the "due process" clause of the 14th Amendment to the Constitution of the United States and the Texas Constitution. The act attempts, moreover, an unconstitutional delegation of legislative power to the very class of persons sought to be regulated.

0-835 To: Hubert Forman, County Attorney, Upton County
Date: May 22, 1939

It is within the authority of the commissioners' court to determine whether or not "an imperative public necessity exists" for a county audit as contemplated within the provisions of Articles 1641 and 1646a, R. C. S.—there being no limit as to the number of audits that can be had so long as such reasons and necessity as enumerated in Article 1641, supra, in the judgment of the court creates such "imperative public necessity" therefor.

0-836 To: G. A. Walters, County Attorney, San Saba County
Date: May 25, 1939

The fees of the country attorney, district clerk and sheriff or constable in a suit brought by the county attorney to recover delinquent taxes on real property due the State and county are fixed by Article 7332, R. C. S., as amended; and Article 7345b, V. A. C. S., allows no additional fees to these officers when a city, independent school district or other "taxing unit" is impleaded or intervenes, for additional services rendered.

0-840 To: T. M. Trimble, First Assistant State Superintendent
Date: May 23, 1939

Bonds voted for the purpose of repairing and equipping a school building may not be used for the purchase of school busses. Articles 2784, 2786, R. C. S.; Section 9, Article VIII, Texas Constitution. *Carroll v. Williams*, 202 S. W. 504; *Johnson v. Ferguson*, 55 S. W. (2d) 153.

0-842 To: Chas. E. Baughman, Chief Clerk, Department of Agriculture
Date: May 26, 1939

The Department of Agriculture has no authority to take out insurance on jacks and stallions since no appropriation has been made therefor and a contrary policy has been expressed by the legislature in S. C. R. No. 3, 2nd C. S. of 37th Legislature. See also Opinion 0-201.

0-843 To: C. E. Nicholson, Chairman, Committee on Municipal and Private Corporations, House of Representatives
Date: May 29, 1939

H. B. No. 1076, authorizing counties having a population of not less than 320,000 and not more than 340,000 inhabitants, according to the last preceding Federal Census, to borrow money by the issuance of relief bonds, is unconstitutional in that it attempts to enact a special or local law in violation of Article III, Sections 56 and 57 of the Texas Constitution.

0-848 To: Paul T. Holt, County Attorney, Travis County
Date: May 29, 1939

An ordinance of the city of Austin, Texas, regulating the solicitation of advertising, subscriptions and gifts, and requiring a permit to be issued by the city manager as a condition precedent to the right to engage in such activities is unconstitutional and invalid in its entirety in that it provides no rules or standards governing the city manager in approving or disapproving applications made under it or in revoking permits so issued. *Spann v. City of Dallas*, 235 S.W. 513. See also 0-639.

0-850 To: Sam T. Holt, County Attorney, Panola County
Date: May 23, 1939

A constable is entitled to a fee of two dollars for executing a warrant of arrest in a misdemeanor case, such fee to be taxed against the defendant on conviction. Article 1065, C. C. P.

0-855 To: John R. Shook, Criminal District Attorney, San Antonio
Date: May 24, 1939

Under Article XVI, Section 17 of the Texas Constitution and authorities in this state an officer's resignation cannot take effect until his successor has been appointed and has qualified according to law; consequently, the resignation and subsequent withdrawal of resignation of the Tax Assessor Collector of Bexar County (the commissioners' court having taken no action) leaves the situation in status quo as though no resignation had been attempted.

0-857 To: Alfred F. Herbelin, Assistant District Attorney, Waco
Date: May 24, 1939

A person who is under the age of 21 years can qualify as a notary public when the requisites as to bond and oath are fulfilled as required by Article 5951, R. C. S. and Article 5953, R. C. S. *Freeman v. Port Arthur Rice and Irrigation Co.*, 188 S.W. 444.

0-859 To: Leo C. Buckley, County Attorney, Zapata County
Date: May 25, 1939

The county clerk is entitled to charge \$1.00 for the commission of a notary public, which is to be remitted to the Secretary of State, and fifty (50c) cents for administering the oath of office, fifty cents for approving the bond and ten cents per hundred words for recording the bond of a notary public. Articles 3930, 3914, 5951, 5953, 5952, R. C. S.

0-867 To: R. V. Rayford, County Auditor, Rusk County
Date: May 29, 1939

A county cannot pay for the meals of jurors who are in the custody of the sheriff in addition to the three dollars per day allowed by law and no extra or other compensation can be paid except the three dollars per day as allowed by Articles 2122, R. C. S. and 1056, C. C. P.

0-380 To: Gerald Stockard, County Attorney, Denton County
Date: May 29, 1939

A constable is prohibited by Article XVI, Sections 33 and 40, of the Texas Constitution from serving and accepting pay as grand jury bailiff while such constable retains his office as constable.

0-889 To: Tom DeBerry, Member, State Board of Control
Date: May 29, 1939

Grants of old age assistance can be paid during the month of June, 1939, to those eligible persons certified by the Old Age Assistance Commission on June 1, 1939, although the present law is amended subsequent to June 1, 1939, and before warrants for the June payments are actually issued by the Comptroller of Public Accounts. Section 51b of Article III, Constitution of Texas; Chapter 495, General Laws, 3rd C. S., 44th Legislature.

0-1078 To: Ned McDaniel, County Attorney, Wichita County
Date: May 11, 1939

When a constable accompanies a highway patrolman and actually makes the arrest himself or participates therein such constable would be entitled to the fees as provided for by Article 1065, C. C. P. However, if the constable merely accompanies the patrolman when an arrest is made and does not actually make the arrest himself or participate therein, he would be entitled to no fee. See also Opinion 0-768.

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