

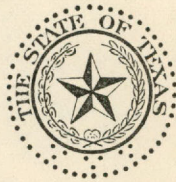
MONTHLY REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF TEXAS



GERALD C. MANN
ATTORNEY GENERAL

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OPINIONS RENDERED
February 1, 1940
To
February 29, 1940



GERALD C. MANN
ATTORNEY GENERAL

VOLUME 2, NUMBER 2

FEBRUARY, 1940

- 0- 69 To: George H. Sheppard, Comptroller of Public
Accounts
Date: February 26, 1940

A medical and dental service bureau which collects claims and bills for its members only, making a charge therefor, is not a collecting agency and is not liable for the gross receipts tax provided for in Art. 7061, R. C. S. *Merchants Red Book Company v. State*, 125 S. W. (2d) 279; *McCarthy v. Hughes*, 36 R. I. 66, 88 Atl. 984; 14 C. J. S. 1324.

- 0- 311 To: Sam Bain, County Attorney, Leon County
Date: February 7, 1940

The county tax assessor-collector may legally receive in the payment of taxes scrip issued to the sheriff and presented by a holder other than the one to whom it was issued only when the scrip was issued for the services mentioned in Ch. 3, Title 15, C. C. P. However, such scrip may be redeemed or paid only by the fund against which it was issued. Art. 1060, C. C. P.; Arts. 2122, 7049, R. C. S.; *Miller v. State*, 53 S. W. (2d) 790; 61 C. J. 963; Cooley on Taxation, 4th Ed., Sec. 1252; Opinions 0-205, 0-774; Letter Opinion Sept. 11, 1936.

- 0- 399 To: L. P. Heard, County Auditor, Bell County
Date: February 29, 1940

As neither the justice of the peace nor the constable in question made an itemized and sworn statement of the expenses incurred by them in the conduct of their offices at the close of each month as required by Art. 3899, V. A. C. S., they are not entitled to deduct such expenses from their fees of office. Arts. 3883, 3891, 3896, 3897, 3898, V. A. C. S.; *Pierson, Justice of the Peace, et al., v. Galveston County*, 131 S. W. (2d) 27; Opinion 0-131.

It is not the duty of the county auditor or the commissioners' court to approve the annual accounts of the above named precinct officers except as provided by Art. 3896, V. A. C. S.

- 0- 584 To: W. Clinton Owsley, Director, Gas Utilities Division,
Railroad Commission of Texas
Date: February 19, 1940

1. A municipality engaged in the sale and distribution of liquefied petroleum gas through a city distributing system is required to obtain a license and post bond under H. B. 792, Acts 46th Leg.

2. All plumbers who are engaged in the installation of liquefied petroleum gas storage and dispensing systems and gas piping for liquefied petroleum gas dealers must obtain a license pursuant to Sec. 2b(1), H. B. 792, even though they have plumbers' licenses.

3. Persons of foreign states purchasing liquefied petroleum gas from refineries in Texas, and engaged in the transportation over Texas highways of equipment and liquefied petroleum gas from Texas refineries, though strictly in interstate commerce, marked under the provisions of the law, should obtain a license.

4. A license to engage in a phase of the liquefied petroleum gas industry will serve as authority for the conduct of such phase of the business in as many places or establishments as the licensee may desire; however, a license to engage in only one phase of business will not serve as authority to conduct a separate and distinct phase, even at the same locality.

5. The license issued to the Texas Mechanical Laboratories, Inc., will not inure to the benefit of the J. & S. Carburetor Company. Art. 1069, P. C.

6. All refineries manufacturing liquefied petroleum gases are required to obtain a license and post bond.

(See opinion for citation of additional authorities.)

0- 738 To: George H. Sheppard, Comptroller of Public
Accounts

Date: February 2, 1940

A sale of land, on which no value has been set under Art. 7345b, R. C. S., at a tax sale for less than the taxes due is invalid. Arts. 7326, 7328, R. C. S.; *Willis v. Martin*, 85 S. W. (2d) 1085; Conference Opinion 2884.

0- 769 To: C. Woodrow Laughlin, County Attorney, Jim
Wells County

Date: May 10, 1939

The county judge is entitled to a fee of \$3.00 for each civil case finally disposed of even though the case may be dismissed without a trial and dismissed before an answer is filed by the defendant. Art. 3926, R. C. S.

In cases dismissed by virtue of Art. 2089, R. C. S., it is not necessary for the judge to make any order. Therefore, the case is not finally disposed of by the judge, and he is not entitled to any fee.

0-1062 To: Tom C. King, State Auditor and Efficiency
Expert
Date: February 24, 1940

This opinion deals with the type of records and accounts that should be kept by the State Treasurer in the payment of state salary warrants which have been assigned by state employees. Arts. 569, 4359, 4372, 4382, 6165a-6, V. A. C. S.; 5 C. J. 873; 6 C. J. S. 1099. (See opinion for citation of additional authorities.)

0-1100 Sup.
To: O. J. S. Ellingson, General Manager, Texas
Prison System
Date: February 1, 1940

The premium on the insurance policy covering damages from boiler explosion may not legally be paid from the current appropriation made to the Texas Prison System to pay "liability insurance premium."

0-1353 Sup.
To: V. C. Marshall, Chairman, State Soil Conserva-
tion Board, Temple
Date: February 1, 1940

When an election is ordered by the board in a proposed district, all landowners within the boundaries of the territory as defined by the board shall be eligible to vote, provided they are otherwise qualified under the Constitution and the laws of this State. Art. 165a-4, V. A. C. S.

A landowner living in an incorporated city or town who owns land outside the corporate limits of such city or town, yet which lies within the boundaries of the territory as determined by the board, is entitled to vote in the elections held under the Soil Conservation Act. Art. 165a-4, V. A. C. S.

Incorporated cities and towns may be included as part of a district. (Opinion 0-1353 partially overruled.)

0-1436 To: Julian Montgomery, State Highway Engineer
Date: February 15, 1940

The State of Texas is not liable for the acts of its agents which are committed outside the scope of a contract which sets forth their duties and authority. *Clodselter v. State*, 86 N. Carolina 54, 41 Am. Rep. 440; *Campbell Building Co. v. State Road*

Commission, 70 Pac. (2d) 857; *Clark County Construction Company v. State Highway Commission*, 58 S. W. (2d) 388; *Ambum v. State*, 141 Pac. 314.

0-1524 To: Orville S. Carpenter, Chairman and Executive Director, Texas Unemployment Compensation Commission
Date: February 1, 1940

H. B. 759, Acts 46th Leg., which authorizes and directs the transfer of an estimated \$4,000,000 from the Unemployment Trust Fund to the Railroad Unemployment Insurance Account, is constitutional. 42 U. S. C. A., Title 3, Secs. 501-503; 42 U. S. C. A., Titles 7, 8, and 9, Secs. 901-1110; 45 U. S. C. A., Secs. 351-366; Arts. 5221b-1—5221b-23, V. A. C. S.; Constitution of Texas, Art. III, Sec. 51; Art. VIII, Sec. 6; Art. XVI, Sec. 6. (See opinion for citation of additional authorities.)

0-1611 To: Harry J. Schulz, County Attorney, Live Oak County
Date: February 24, 1940

It is not necessary that over-weight and over-size motor vehicles be registered and licensed under Art. 6675a-2, V. A. C. S., in a case where the Highway Department has granted a special permit for the movement of such vehicles as provided in Sec. 2, Ch. 282, Acts 42nd Leg. Art. 807b, P. C.; Arts. 6675a 1-8b, 6701a, V. A. C. S.; H. B. 6, Acts 41st Leg., 2nd C. S.; S. B. 10, Acts 41st Leg., 2nd C. S.; 39 Tex. Jur., p. 146; *Sproles v. Binford*, 52 F. (2d) 730, 736.

0-1627 To: Tom C. King, State Auditor
Date: February 14, 1940

The Board of Regents of the State Teachers' Colleges is not empowered to build a college under a land-purchase contract, the terms of which call for payments by the college over a period of more than three years.

As such contract is unauthorized, no liability was created against the college for future payments under the contract; however, the college has a claim against the property in the nature of an equitable interest therein by virtue of payment of a portion of the purchase price.

Art. III, Sec. 49; Art. VIII, Sec. 6, Constitution of Texas; Arts. 2647, 2654c, 2654d, V. A. C. S. (See opinion for citation of additional authorities.)

0-1649 To: R. T. Burns, County Attorney, Walker County
Date: February 5, 1940

When a clerk is appointed by the county attorney in compliance with Art. 3902, V. A. C. S., the salary of such clerk can legally be deducted in arriving at the maximum compensation of the county attorney as provided by law. Arts. 3883, 3891, 3899, V. A. C. S.

0-1650 To: Tom C. King, State Auditor and Efficiency
Expert
Date: February 14, 1940

The fact that the payment of an additional consideration of \$5,000.00 was paid by the Board of Regents of the State Teachers' Colleges and was not mentioned in either the escrow agreement or the deed has no bearing on the legality of the transaction. It is beyond the province of this department to question the propriety of such action. 14 Tex. Jur. 812; 30 Tex. Jur. 836; Opinion 0-1627.

0-1660 To: Tom C. King, State Auditor and Efficiency
Expert
Date: February 14, 1940

The Board of Regents of the State Teachers' Colleges is not empowered to enter into a lease contract for a longer period than that for which the appropriation out of which the rental payments are to be made is effective. The status of the college in such lease is that of a tenant at will, and as such, the college is obligated to pay rentals only for the period of time it chooses to occupy the premises. *Charles Scribner's Sons v. Marrs*, 262 S. W. 722; *Ft. Worth Cavalry Club v. Sheppard*, 83 S. W. (2d) 660; *Hill v. Hunter*, 157 S. W. 247; Opinions 0-1627, 0-1650.

0-1662 To: Tom C. King, State Auditor and Efficiency
Expert
Date: February 27, 1940

Payments for the retirement of principal and interest of the dormitory revenue bonds of one of the State Teachers' Colleges cannot be lawfully made out of college funds other than gross revenues of the project, with reasonable operation and maintenance costs deducted. Acts 1933, 43rd Leg., 2nd C. S., Ch. 5; Art. III, Secs. 44, 49, 50; Art. VIII, Sec. 6, Constitution of Texas; H. B. 255, Acts 46th Leg.; *Fort Worth Cavalry Club v. Sheppard*, 83 S. W. (2d) 660; Conference Opinion 3012.

0-1688 To: C. F. Petet, Secretary, Railroad Commission
of Texas
Date: February 29, 1940

Under Art. 6370, R. C. S., the Railroad Commission may in its discretion pass an order requiring all rail carriers to install at their own expense luminous signs at crossings and such order may be passed without notice and hearing. Art. 6448, R. C. S.

The Railroad Commission has no authority to require at crossings either the installation of automatic bells or swinging signs, or the construction of underpasses or overpasses.

Art. 6370, R. C. S., does not apply to railroad crossings in towns incorporated under the "home rule" statutes or in towns containing not more than 5,000 inhabitants. Arts. 1016, 1146, 1175, 6704, R. C. S.

0-1693 To: Tom C. King, State Auditor and Efficiency
Expert
Date: February 27, 1940

S. B. 455, Acts 46th Leg., does not purport to validate the procedure of bonds issued by colleges under Ch. 5, Acts 43rd Leg., 2nd C. S., so as to give the sanction of the Legislature to the originally unlawful pledge of funds, and does not attempt to provide additional funds for purposes other than those allowed under the original act. Art. III, Sec. 44, Constitution of Texas; *Fort Worth Cavalry Club v. Sheppard*, 83 S. W. (2d) 660, Opinion 0-1662.

0-1703 (Conference Opinion 3098)
To: E. W. Easterling, County Attorney, Jefferson
County
Date: February 19, 1940

Commensurate with the duty imposed upon the county commissioners' courts to provide roads and bridges, such courts would have the implied power to issue interest-bearing scrip warrants against the Road and Bridge Fund as a necessary incident to a compliance with such imposed duty. Art. VIII, Sec. 9, Constitution of Texas; Arts. 718, 2351, Sec. 6, V. A. C. S.; *Laster v. Lopez*, 202 S. W. 1039, 217 S. W. 373.

The county commissioners' court is without authority to issue interest-bearing scrip warrants against the General Fund for current expenses. Art. 2351, V. A. C. S.; *Laster v. Lopez*, supra; *San Patricio County v. McClane*, 58 Tex. 243; *Davis v. Burney*, 58 Tex. 364; Conference Opinions 1836, 3095; Letter Opinions Aug. 22, 1887, Feb. 1892, Nov. 8, 1917, Sept. 28, 1935, Aug. 9, 1937. (See opinion for citation of additional authorities.)

0-1730 To: Bascom Giles, Commissioner, General Land Office
Date: February 27, 1940

In order to effect a forfeiture of the leases in question (executed under Acts 1931, 42nd Leg.; Ch. 271, Sec. 8) for failure to drill an offset well as required by law, the Commissioner of the General Land Office must take some action amounting to a re-entry or its equivalent. The Commissioner has discretion in such forfeiture. Acts 1919, 36th Leg., 2nd C. S., Ch. 19, p. 51; Acts 1919, 36th Leg., 2nd C. S., Ch. 81, p. 249; Arts. 5359, 5360, 5370, 5372.

0-1749 To: Marvin H. Brown, Jr., Criminal District Attorney, Fort Worth
Date: February 5, 1940

Where a person makes a tax payment under a mistake of fact, he may recover the amount of taxes paid as county taxes from the county; however, he may not be refunded the payment made by him as State taxes, which payment has been paid into the State Treasury. Art. VIII, Sec. 6, Constitution of Texas; *City of Houston v. Feizer*, 13 S. W. (2d) 266; *County of Galveston v. J. C. Gorham*, 49 Tex. 279; *Frost v. Fowlerton Consolidated School District No. 1*, 111 S. W. (2d) 754; 61 C. J. 980, 991; Opinions 0-1044, 0-1266.

0-1755 To: Julian Montgomery, State Highway Engineer
Date: February 10, 1940

The employees of the Highway Department may legally avail themselves of group insurance; however, the accountants of the Highway Department cannot legally perform the extra work that such plan would entail. Art. XVI, Sec. 6, Constitution of Texas.

0-1767 To: George W. Cox, State Health Officer
Date: February 19, 1940

The public exhibition of a preserved mummified infant, known as the "mummified turtle baby," which was born with an epidermis of plate-like scales and lived three days, does not contravene the civil or criminal statutes of Texas, and the State Board of Health does not possess the statutory authority to forbid such public exhibition.

A permit for the exhibition of a specimen of infantile aberration designated the "mummified turtle baby" is not required by law.

A preserved unique specimen of human malformation is the subject of property rights in this State.

Under Art. 4477, Rule 38a, V. A. C. S., the State Board of Health, acting through the State and local registrar of Vital Statistics, has the authority to grant or refuse a permit for the preservation or mummification of a monstrous birth.

Arts. 1, 3, 526, 530, 695, 785, P. C.; *Doodeward v. Spence*, 6 Aust. C. L. R. 406; *Gray v. State*, 114 S. W. 635; 17 C. J. 1137. (See opinion for citation of additional authorities.)

0-1772 To: Walter C. Woodward, Chairman, Board of Insurance Commissioners

Date: February 24, 1940

S. B. 135, Acts 46th Leg. (relating to insurance companies and associations issuing policies on the lives of persons or providing health and accident benefits upon the mutual assessment plan, etc.) repeals Ch. 6, Title 78, R. C. S. (Insurance) and specifically the "red letter" provision of Art. 4794, V. A. C. S.; *Johnson v. Ferguson*, 55 S. W. (2d) at p. 175; *First National Bank v. Lee County Cotton Oil Company*, 274 S. W. at pp. 129, 130; *State v. Houston Oil Com. of Texas*, 194 S. W. 432. (See opinion for citation of additional authorities.)

0-1778 To: A. J. Luckett, County Attorney, Comal County
Date: February 8, 1940

Shares of stock in a federal savings and loan association are valid investments for all fiduciaries. Arts. 842a, 881a, V. A. C. S.; S. B. 13, Acts 46th Leg.

0-1780 To: Ben J. Dean, District Attorney, Breckenridge
Date: February 12, 1940

Only such indebtedness as was outstanding as of Jan. 1, 1933, is eligible to participate in the moneys allocated to the Board of County and District Road Indebtedness; therefore, as Stephens County purchased the bonds in question on February 26, 1924, with money from the interest and sinking fund of the bonds, such bonds are not eligible to participate in the above mentioned moneys. H. B. 688, Acts 46th Leg.; Art. 5939, R. C. S.; *Smith v. Cooley*, 164 S. W. 1050; *Close v. Steel*, 2 Tex. Rep. 237, 13 Tex. Rep. 625.

0-1781 To: Claud Wolf, County Auditor, Howard County
Date: February 20, 1940

The county auditor is without authority to approve and direct payment of a bill for postage presented by the county school superintendent and charge the amount of the bill to the general or any other fund of the county. Arts. 2700, 2700a, 2700b, 2700c, 2700d, 2700d-1—2700d-40, V. A. C. S.

Under Arts. 2688 and 3899b, Sec. 2, V. A. C. S., the commissioners' court has the authority to purchase for the use and benefit of the office of the county school superintendent furniture and such office supplies that would come within the classification of "stationery" made in Art. 2362, V. A. C. S., which embraces printing and blanks. Arts. 2688, 3899b, V. A. C. S.; Letter Opinion Feb. 24, 1931.

0-1782 To: Claud Wolf, County Attorney, Howard County
Date: February 19, 1940

The district clerk cannot legally issue pay to jurors who have been impaneled on a specific case for the days that the jurors did not serve when the case was postponed because of a death in the family of the attorney. Arts. 2118, 2122, R. C. S.

0-1788 To: Walter C. Woodward, Chairman of the Board
R. G. Waters, Casualty Insurance Commissioner
Board of Insurance Commissioners
Date: February 2, 1940

All private corporations, chartered by this State, assuming to write title insurance must comply with the provisions of the "Title Guaranty Act." Art. 1302a, V. A. C. S.

In entering into all title insurance contracts a corporation must take cognizance of, and act according to the rules and regulations prescribed by the Board of Insurance Commissioners.

This is applicable to all contracts pertaining to title insurance and bearing a date subsequent to the effective date of the Act, and the mere fact that a contract is an extension agreement will not afford ground for any possible exemption from the plain and unambiguous provisions of the Act. Art. XII, Secs. 1 and 2, Constitution of Texas; Art. 1318, R. C. S.; 17 R. C. L. 476, 477; *Daniel v. Tyrrell & Garth Investment Company*, 93 S. W. (2d) 372.

0-1796 To: Joe J. Fisher, District Attorney, San Augustine
Date: February 14, 1940

It is not the duty of the county attorney to defend the validity of a contested local option election. When the county attorney is made contestee and served with notice under Arts. 3043, 3070, R. C. S., it then becomes his duty to prepare and file the written contestee's reply as required by said statutes, and when this is done, he has fully discharged his statutory duty. Art. V, Sec. 21, Constitution of Texas; Arts. 666-32, 666-40a, V. A. P. C.; Arts. 3043, 3069, 3070, R. C. S.; *Moore, et al., v. Commissioners' Court of Titus County*, 192 S. W. 805.

0-1800 To: Mrs. Willie O'Neal, County Auditor, Carson
County
Date: February 12, 1940

Under the facts submitted to this department, property belonging to a single man upon which property he and his mother live, his mother claiming land in another county of this State as a homestead, is not entitled to the homestead tax exemption provided in Sec. 1-a, Art. VIII, Constitution of Texas. *Roco v. Green*, 50 Tex. 483; *Crowder v. Union National Bank*, 261 S. W. 375; *Crowe v. Burmeister*, 26 S. W. (2d) 447.

0-1806 To: Charles E. Baughman, Chief Clerk, Department
of Agriculture
Date: February 27, 1940

Funds accruing to the Department of Agriculture through the administration of the Citrus Maturity Act may not be used for the purposes of administering the provisions of any other act. Acts 1931, 42nd Leg., H. B. 500; H. B. 526, H. B. 888, S. B. 427, Acts 46th Leg.

0-1824 To: Frank B. Lloyd, District Attorney, Alice
Date: February 29, 1940

The license of a physician who was convicted of a murder and received a suspended sentence is not subject to revocation on that ground alone. Arts. 4505, 4506, V. A. C. S., as amended by H. B. 148, Acts 46th Leg.; Art. 778, C. C. P. (See opinion for citation of cases.)

0-1826 To: R. T. Weber, President, Texas Board of Dental
Examiners
Date: February 7, 1940

Art. 4546, V. A. C. S., does not require the dentist conducting clinics in various counties for the State Health Department to pay the license recordation fee therein provided. Arts. 4414a, 4551a, V. A. C. S.; Art. 749, V. A. P. C.; *Queen Insurance Co. v. State*, 24 S. W. 397.

0-1831 To: Julian Montgomery, State Highway Engineer
Date: February 27, 1940

The Highway Department does not have authority to insert in its construction contracts the clause providing for a 15% differential on the unit price bid in favor of domestic cement over foreign cement. Art. 6674h, V. A. C. S.; *Gulf Bitulithic Company v. Nueces County*, 11 S. W. (2d) 305.

0-1832 To: George H. Sheppard, Comptroller of Public
Accounts
Date: February 2, 1940

On reinstatement of purchase of state land after forfeiture the purchaser is not liable for the payment of the local ad valorem taxes for the time between the date of the forfeiture and the date of reinstatement. Art. 5326, R. C. S.; *Gerlach Mercantile Company v. State*, 10 S. W. (2d) 1035; *Lawless v. Wright*, 86 S. W. 1039; *Boykin v. Southwest Texas Oil and Gas Co.*, 256 S. W. 581.

0-1836 To: William C. McDonald, County Attorney, Coke
County
Date: February 15, 1940

A road district may be created and vote bonds therein within a road district which has already been established and which has bonds outstanding, but it must be in the manner prescribed by law and in conformity with Arts. 767d, 767e, V. A. C. S.; 752a, 752b, 752c, V. A. C. S.

0-1838 To: Carl M. Anderson, City Attorney, Sweetwater
Date: February 24, 1940

A city has no authority to issue hospital revenue bonds for the purpose of making extensions to the city hospital. Arts. 1111-1118, R. C. S.; *Foster v. City of Waco*, 255 S. W. 1104; *Tell v. Pulte*, 10 S. W. 692.

0-1839 To: C. Burt Potter, County Attorney, San Patricio County
Date: February 5, 1940

Art. 1659, R. C. S., governs the purchase of road machinery, and the requirements of said article relative to competitive bidding, etc., must be strictly complied with in the purchase of road machinery by the county. Art. 2368a, R. C. S.; *Limestone County v. Knox*, 234 S. W. 131; Conference Opinion 1761; Letter Opinions Dec. 4, 1931, June 12, 1937, and Sept. 14, 1937.

0-1842 To: Tom C. King, State Auditor and Efficiency Expert
Date: February 12, 1940

1. The Appropriation Bill of the 45th Legislature (S. B. 139) granted the authority to the Board of Regents of the State Teachers' Colleges to require contributions from each institution to pay said Regents' per diem and expense allowances from local institutional funds and/or from State Treasury funds. Art. 2647, R. C. S.

2. The board had the authority to employ an executive secretary and a stenographer and pay their salaries from either of the funds mentioned above.

3. Such incidental expenses of the board as the costs of floral offerings could not be paid from the funds appropriated to the board by S. B. 139, Acts 45th Leg.

4. The board has the authority to maintain a bank account in its name as a depository for contributions from the different colleges under its jurisdiction, disbursements from which are made by checks drawn by the board's executive secretary. Arts. 2647, Par. 7; 2654d, Sec. 2, V. A. C. S.; S. B. 139, Acts 45th Leg.; Art. IV, Secs. 23 and 24, Constitution of Texas.

0-1844 To: V. B. Goar, County Attorney, Blanco County
Date: February 6, 1940

The Commissioners' Court of Blanco County cannot legally loan \$1,500.00 from the Blanco County Special Right of Way Fund to Road Precinct No. 3. Arts. 779, 836, 837, R. C. S.; *El Paso v. Elam*, 106 S. W. (2d) 393; *Howard v. Henderson County*, 116 S. W. (2d) 479.

0-1848 To: L. L. Roberts, County Auditor, Hutchinson
County
Date: February 15, 1940

Funds made available to the county through the Lateral Road Account may legally be used in the retirement of obligations issued evidencing expenditure of funds for the construction of jetties for the protection of bridges. Arts. 2351, 6674q, R. C. S.; H. B. 688, Acts 46th Leg.

0-1850 To: O. J. S. Ellingson, General Manager, Texas
Prison System
Date: February 2, 1940

This opinion deals with payments due inmates of the Texas Prison System when discharged or released on some form of clemency; and with the method of computing the time served by such inmates. Arts. 6166z (1), 6203 (10), R. C. S.; Acts 1927, 40th Leg., R. S., H. B. 59, Ch. 212, Acts 1929, 41st Leg., 1st C. S., S. B. 23, Sec. 1; Letter Opinions July 31, 1929, and Jan. 3, 1936.

0-1851 To: Charley Lockhart, State Treasurer
Date: February 7, 1940

An instrument which is merely one of conveyance and is not one creative of security for the indebtedness mentioned in such instrument is not subject to the stamp tax levied by Art. 7047e, V. A. C. S.

Stamps are not required on a deed where the grantee assumes pre-existing indebtedness which indebtedness is secured by a prior lien which had been stamped when it was filed for record. Opinions 0-758, 0-1328.

Stamps are not required on a chattel mortgage on personal property given as further security for the same indebtedness between the same parties, which indebtedness is secured by a vendor's lien and deed of trust lien on which stamps have been paid. Opinion 0-758.

0-1853 To: Homer L. Moss, County Attorney, Wheeler
County
Date: February 15, 1940

A taxpayer is entitled to the homestead exemption on both surface and minerals although they are rendered for taxation separately. Art. VIII, Sec. 1a; Art. XVI, Sec. 51, Constitution of Texas; *Evans v. Mills*, 67 F. (2) 840; Conference Opinion 2925; Letter Opinion June 8, 1935.

0-1855 To: James E. Kilday, Director, Motor Transportation Division, Railroad Commission of Texas
Date: February 2, 1940

In order to determine whether the Motor Carrier Law is applicable to the operation of trucks under the lease form submitted to this department, it would be necessary to ascertain the facts and circumstances leading to the making of each particular lease as well as the facts and circumstances relating to the operation thereunder. Art. 911b, V. A. C. S.; *Anderson, Clayton and Co. v. State*, 62 S. W. (2d) 107, 82 S. W. (2d) 941; Opinions 0-1221 and 0-1401.

0-1856 To: Orville S. Carpenter, Chairman and Executive Director, Texas Unemployment Compensation Commission
Date: February 2, 1940

Under the partnership agreement submitted to this department, a change in the personnel of the partnership fashions a new partnership; therefore, it should be set up as a new employing unit. Art. 5221-b, Secs. 6(d), 17(e); 5925, V. A. C. S.; Art. 1070, P. C.; *Altgelt v. D. Sullivan and Co.*, 79 Tex. 333; *People v. Zanigan*, 133 N. E. 783; *Andrews v. Stinson*, 98 N. E. 225; 32 Tex. Jur. 773.

0-1858 To: Thomas R. Chandler, County Attorney, Robertson County
Date: February 2, 1940

A scheme whereby, in substance, a theatre gives a prize to a person if he answers a question correctly, the name of such person being drawn from a container of signed entry blanks, is a violation of the lottery laws of this State. Art. III, Sec. 47, Constitution of Texas; Art. 654, P. C.; *City of Wink v. Griffith Amusement Company*, 100 S. W. (2d) 695; *Griffith Amusement Co. v. Morgan*, 98 S. W. (2d) 844; *Boatwright v. State*, 38 S. W. (2d) 87; *Cole v. State*, 112 S. W. (2d) 725; Opinions 0-54, 0-428, 0-967, 0-1174, 0-1200, 0-1329, 0-1336, 0-1789.

0-1859 To: Charley Lockhart, State Treasurer
Date: February 1, 1940

A chattel mortgage which covers all stock, crops, feed, farm implements, and all government rentals, parities, and subsidies is subject to the stamp tax levied by Art. 7047e, V. A. C. S. Conference Opinion 3061.

0-1860 To: Bascom Giles, Commissioner, General Land Office
Date: February 16, 1940

The Land Commissioner, and not the School Land Board, has full authority and control over the sale of the timber on unsold, surveyed public school lands and the leasing of such lands for grazing. Arts. 5307, 5321, 5322, 5331-5337, V. A. C. S.; H. B. 9, Acts 46th Leg.; *Davis v. Conn*, 161 S. W. 39, 41; *West Lumber Co. v. C. R. Cummings Export Co.*, 196 S. W. 546, 551; *Boykin, et al., v. Rosenfield & Co.*, 69 Tex. 115, 118.

0-1861 To: J. W. Calhoun, Comptroller, The University of Texas
Date: February 29, 1940

The property conveyed to the Board of Regents for the use and benefit of The University of Texas by George Beggs and Mike Hogg is property belonging to the State and is, therefore, exempt from taxation. Art. VII, Secs. 1, 10, 16; Art. VIII, Sec. 11, Constitution of Texas; Art. 2584, et seq., V. A. C. S. Opinion 0-1577 modified. (See opinion for citation of additional authorities.)

0-1862 To: Thos. A. Wheat, County Attorney, Liberty County
Date: February 6, 1940

The commissioners of a drainage district are not authorized to expend funds of the district obtained through a maintenance tax levy upon the owners residing within the district for the maintenance of private drains constructed in accordance with Art. 8153, R. C. S. Arts. 8097-8193, R. C. S.; Art. 852, P. C.; *Jefferson County Drainage District v. McFaddin*, 291 S. W. 322; *Carroll v. Williams*, 202 S. W. 504.

0-1864 To: R. G. Waters, Casualty Commissioner, Board of Insurance Commissioners
Date: February 6, 1940

An automobile lease agreement whereby the lessor agrees to assume all damages in case of accident to the automobile in the hands of the lessee over and above \$50.00 does not constitute insurance. Art. 4859f, Sec. 6b, V. A. C. S.; H. B. 626, Sec. 1, Acts 46th Leg.; *National Auto Service Corp. v. State*, 55 S. W. (2d) 209; *Re Fire Certificate*, 39 Pa. Co. Ct. 163, cited in 63 A. L. R. 732.

0-1866 To: Charles R. Martin, County Auditor, Harrison County

Date: February 24, 1940

A constable compensated on a fee basis is entitled to deduct from his excess fees as an authorized expense of office his traveling expenses, including the expense of gas, oil and a reasonable amount of "upkeep," incurred by the constable in the discharge of his official duties, provided he has complied with Arts. 3891 and 3899, R. C. S.

0-1868 To: William W. Allen, County Attorney, Lavaca County

Date: February 23, 1940

Where a defendant pleads guilty in a justice court but does not pay the fine, and a year later a newly elected justice issues commitment and the defendant is placed in jail and lays out his fine and costs, the justice of the peace who took the plea of guilty would be entitled to the trial fee. It would be immaterial as to whether or not the first justice of the peace had collected a portion of the fine and costs. Art. 1052, C. C. P.; Opinions 0-616, 0-1759.

0-1873 To: Paul T. Holt, County Attorney, Travis County

Date: February 14, 1940

In a proper case the Railroad Commission has the authority to limit the amount of tonnage hauled under a certificate of convenience and necessity or a permit. However, there is no mandatory duty on the commission either to make a finding and include in the certificate or permit a term or condition stating the amount of tonnage which may be hauled or to enter a general order designating the amount of tonnage to be hauled by motor carriers operating under a certificate or permit. Art. 911b, V. A. C. S.; Art. 827a, Sec. 5, P. C.

A carrier hauling in excess of 7,000 pounds is violating the Load Limit Law and not the Motor Carrier Act.

Art. 1690b, Sec. (c), P. C., does not give the Attorney General or any district or county attorney the authority to bring any injunctive proceedings against a motor carrier for violating the Load Limit Law. Arts. 827a, Sec. 5; 1690b, Sec. (b), P. C.

0-1875 To: A. T. Freeman, County Attorney, Gaines
County
Date: February 8, 1940

Art. 752cc, R. C. S., prohibits the commissioners' court from creating road districts, the portions of which would overlap a political subdivision or another road district previously created and upon which bonds have been issued, except as is specifically permitted under this act by the issuance of compensation bonds. Art. III, Sec. 52, Constitution of Texas; Arts. 752a, 752b, 752c, 767a, 676e, R. C. S.; *San Antonio and A. P. Railway Company v. State*, 95 S. W. 680.

0-1876 To: C. Woodrow Laughlin, County Attorney, Jim
Wells County
Date: February 8, 1940

The county clerk has the authority to pay a deputy his regular salary during the absence of such deputy from employment due to sickness or vacation for a reasonable length of time. Art. 3902, V. A. C. S.; Opinion 0-1441.

0-1877 To: O. E. Gerron, County Attorney, Ector County
Date: February 23, 1940

The fees collected by the sheriff under Art. 1029, C. C. P. (arrest and mileage fees, fees for attaching and summoning witnesses, fees for removing and conveying prisoners, etc.) are to be accounted for in computing the maximum annual salary to be retained by such sheriff. Art. 1034, C. C. P.; Arts. 3883, 3891, R. C. S.

0-1880 To: George H. Sheppard, Comptroller of Public
Accounts
Date: February 27, 1940

The county tax assessor-collector is not entitled to the 5% commission referred to in Art. 7331, V. A. C. S., on delinquent real estate taxes collected from the 1939 tax roll during the period February 1 to June 30. Arts. 7324, 7325, 7336, Secs. (b), (e), V. A. C. S.; S. B. 402, Acts 46th Leg.

0-1881 To: Bert Ford, Administrator, Liquor Control
Board
Date: February 19, 1940

A city duly incorporated under the laws of this State cannot legally pass an ordinance making it an offense to drive an auto-

mobile within the corporate limits of the city while under the influence of intoxicating beverages, providing penalty therefor, and placing jurisdiction of the trial of such cases in the corporation court. Art. XI, Secs. 4 and 5, Constitution of Texas; Arts. 62, 802, P. C.; Arts. 1145, 1146, Sec. 5; 1165, R. C. S. *City of Wink v. Griffith Amusement Company*, 100 S. W. (2d) 695; *Xydias Amusement Company v. City of Houston*, 185 S. W. 415; *El Paso Electric Company v. Collins*, 23 S. W. (2d) 295, 25 S. W. (2d) 807; 30 Tex. Jur. pp. 301-302, 304-305.

0-1882 To: Bert Ford, Administrator, Liquor Control Board

Date: February 29, 1940

A person may purchase liquor for his own use in a wet county and transport same to his home in a dry county, and it is not necessary that such person have the written statement provided for in Art. 666-27, Par. (a), P. C., Art. 666-4, Par. (b), P. C.

0-1886 To: George H. Sheppard, Comptroller of Public Accounts

Date: February 14, 1940

The judgment in the case of *State of Texas v. J. W. Jackson*, No. 5756, in the District Court of Bosque County is a final judgment and is one which is not void and, therefore, cannot be collaterally attacked. (See opinion for citation of authorities.)

0-1888 To: H. A. Hodges, County Auditor, Williamson County

Date: February 27, 1940

In serving process in tax suits within the county and in tax suits in another county the sheriff does not have legal authority to charge for mileage traveled in serving such process in addition to the fees of \$1.00 for "out county" suits and \$2.00 for "in county" suits. Art. 7332, R. C. S.

0-1892 To: W. A. Morrison, Criminal District Attorney, Cameron

Date: February 5, 1940

The portion of precinct 5, Milam County, which was taken from precinct 5 and added to precinct 1 prior to 1933 is wet territory. Art. XVI, Sec. 20, Constitution of Texas; *Jackson v. State*, 118 S. W. (2d) 313.

0-1893 To: E. E. Coons, County Attorney, Sherman County
Date: February 27, 1940

A commercial motor vehicle registered in a state which does not reciprocate with Texas under Sec. 2, Art. 827b, P. C., may be operated in Texas by the owner who resides in an adjoining state or by a hired operator for the purpose of hauling goods, wares, and merchandise, which are bought in Texas by the owner without being registered in Texas. Art. 827b, Sec. 5, P. C.

Any non-resident owner, whether he be a resident of an adjoining state or not, of any privately owned motor vehicle may make an occasional trip into this State. Art. 877b, Secs. 1, 5, P. C.; Opinion 0-981 overruled in part.

A non-resident commercial motor vehicle is not subject to temporary registration. Art. 827b, Secs. 2, 3, 5, P. C.; Acts 1935, 44th Leg., R. S., Ch. 342, p. 800.

0-1894 To: Bert Ford, Administrator, Liquor Control Board
Date: February 27, 1940

The term "convicted of a felony" as used in Art. 667-5, P. C., pertaining to the issuance of beer retail licenses, has reference to a final conviction. Art. 828, C. C. P.; *Ex parte Brandenburg*, 140 S. W. 780. (See opinion for citation of additional authorities.)

The Liquor Control Board may cancel a beer license on the grounds that the applicant made a false or untrue statement in his application. Art. 667-19, P. C.

0-1895 To: Joseph A. Beyer, County Auditor, Crane County
Date: February 20, 1940

The commissioners' court may not legally allow extra compensation to a commissioner for auxiliary services rendered by such commissioner as foreman or supervisor of the construction of a county park and playgrounds. Arts. 2340, 2350, R. C. S.; *Knippa v. Steward Iron Works*, 66 S. W. 322; *Cornutt v. Clay County*, 75 S. W. (2d) 299; Letter Opinion Dec. 6, 1935.

0-1896 To: Curtis Renfro, County Attorney, Wilbarger County
Date: February 2, 1940

A sheriff has authority, with the approval of the commissioners' court, to appoint an additional deputy to serve without any compensation. Arts. 3902, 6869, R. C. S.; *Tarrant County v. Smith*, 81 S. W. (2d) 537; Opinions 0-12, 0-925.

0-1898 To: George W. Cox, State Health Officer
Date: February 19, 1940

Art. XVI, Sec. 33, Constitution of Texas would prohibit and restrain the accounting officers of this State from paying any salary to the State Health Officer or an employee of the State Board of Health who is commissioned by the Federal Government under Sec. 702 (a) of the Federal Foods, Drugs, and Cosmetics Act. Art. XVI, Sec. 40, Constitution of Texas.

0-1899 To: James E. Kilday, Director, Motor Transportation Division, Railroad Commission of Texas
Date: February 2, 1940

In order to determine whether the Motor Carrier Law is applicable to the operation of trucks under the lease form submitted to this department, it would be necessary to ascertain the facts and circumstances leading to the making of each particular lease as well as the facts and circumstances relating to the operation thereunder. Art. 911b, V. A. C. S.; *Anderson, Clayton and Company v. State*, 62 S. W. (2d) 107, 82 S. W. (2d) 941; Opinions 0-1221, 0-1401, 0-1855.

0-1900 To: Charley Lockhart, State Treasurer
Date: February 16, 1940

The deed of trust in question which was executed by the Fort Worth Cavalry Club must be stamped to be entitled to record. Art. 7047e, V. A. C. S.

0-1903 To: Julian Montgomery, State Highway Engineer
Date: February 10, 1940

The Highway Department may maintain its membership in the American Association of State Highway Officials, and membership fees are properly payable from the State Highway Fund appropriated by the legislature in the departmental appropriation bill. S. B. 427, Acts 46th Leg.; Arts. 6673, 6674, 6674q-4, V. A. C. S.; Art. 827a, V. A. P. C.; Opinion 0-1318.

0-1904 To: A. M. Turney, County Attorney, Brewster
County
Date: February 7, 1940

Where a deputy sheriff is appointed and takes and subscribes to the oath prescribed by law before entering upon the duties of his office, such oath is sufficient during the term of his principal. However, such deputy must take and subscribe the oath of office prescribed by law upon reappointment by his principal when such principal is re-elected or upon reappointment by a new principal. Art. XVI, Sec. 30, Constitution of Texas; Art. 16, V. A. C. S.; 34 Tex. Jur. pp. 601, 602, 604; *Murray v. State*, 67 S. W. (2d) 274.

In counties of less than 10,000 inhabitants the sheriff-tax assessor-collector is entitled, under Art. 3902, V. A. C. S., only to one chief deputy at a salary of \$1,800.00 per annum. Art. 6869, V. A. C. S.; 39 Tex. Jur. p. 145, Sec. 77.

0-1905 To: R. T. Weber, President, State Board of Dental
Examiners
Date: February 10, 1940

The offer to duplicate dentures or plates for compensation by unlicensed dentists is the practice of dentistry in violation of Art. 4551a, V. A. C. S., and Art. 752b (q), V. A. P. C.

0-1906 To: Wayne Lefevre, County Auditor, Clay County
Date: February 20, 1940

The commissioners' court has the authority to purchase and expend county funds for a radio for the sheriff's office. Art. 3899, Sec. (a), R. C. S.

0-1907 To: F. L. Massie, County Auditor, Wilbarger
County
Date: February 2, 1940

Where an application for a state game preserve is filed covering more acreage than is allowed by Article 917, P. C., whether or not an amended or new original application should be filed is entirely a matter which lies within the administrative discretion of the Game, Fish and Oyster Commission. Art. 978f, V. A. C. S.

0-1908 To: George H. Sheppard, Comptroller of Public
Accounts
Date: February 24, 1940

The fees provided for in Art. 1030, C. C. P., are allowed only where the defendant is charged with a felony; therefore, under the facts submitted to this department the state is not liable for any fees to the sheriff for the services performed by him in connection with the habeas corpus proceedings in question. Art. 163, C. C. P.; Art. 26, P. C.

0-1909 To: Edwin G. Moorhead, District Attorney, Austin
Date: February 7, 1940

Retail merchants selling .22-caliber pistols and revolvers are liable for the occupation tax levied by Art. 7047d, V. A. C. S., and for the municipal or city tax duly levied upon such business equal to one-half of the state levy as authorized by Sec. 2 of said statute. *Caswell and Smith v. State*, 148 S. W. 1159.

0-1910 To: George H. Sheppard, Comptroller of Public
Accounts
Date: February 24, 1940

This opinion deals with the liability of land conveyed by the Farmers National Grain Corporation to the United States of America to the assessment and collection of county ad valorem taxes for the year 1937.

0-1911 To: Department of Agriculture
Date: February 12, 1940

The Department of Agriculture may not use the fees collected by virtue of Art. 5695, V. A. C. S., and other statutes mentioned in the special rider placed at the end of the appropriation bill for the Department of Agriculture, to pay the transportation and maintenance expenses of weights and measures equipment. S. B. 427, Acts 46th Leg.; Opinions 0-954, 0-1687.

0-1912 To: Walter C. Woodward, Chairman, Board of
Insurance Commissioners
Date: February 29, 1940

The traveling expenses of the Actuary of the Board of Insurance Commissioners in attending a meeting in New York City of the Committee on Blanks of the National Association of the Insurance Commissioners may not legally be paid out of State's moneys. S. B. 427, Acts 46th Leg.; Opinion 0-1700.

0-1913 To: Thomas R. Chandler, County Attorney, Robertson County

Date: February 14, 1940

The voters of the Bremond Independent School District have never consented to be taxed at a rate greater than the maximum rate which they voted in 1920 which was, in the words of the statute, "the amount of maintenance tax, together with the amount of bond tax of the district, shall never exceed 50¢ on the one hundred dollars valuation of taxable property." Therefore, such district cannot legally levy a \$1.00 tax rate on the one hundred dollars valuation of taxable property without a further election. Arts. 2851, 2857, Complete Texas Statutes, 1920; Arts. 2784, 2785, 2790, 2799, 2800, 2801, R. C. S.; Acts 1919, 36th Leg., 2nd C. S., H. B. 151, Ch. 53, Special Laws of Texas, p. 135.

0-1914 To: B. T. Walters, County Auditor, Smith County

Date: February 6, 1940

The commissioners' court does not have authority to pay for stationery and office supplies for the district court reporter. Arts. 2321-2327b, V. A. C. S.

0-1915 To: T. O. Walton, President, Agricultural and Mechanical College of Texas, College Station

Date: February 9, 1940

Under the facts submitted to this department, A. & M. College should withhold payment to the Curtis Electrical Company of the final estimates on the contract for furnishing and installing electrical equipment in the dormitory buildings and dining hall on the campus of the college until the Curtis Electrical Company furnishes a release or a receipt of payment in full from the Okovite Company for its material furnished.

Since there can be no lien created against public property, there is no reason for requiring a certificate of the contractor that no such liens have been recorded before payment is made to him.

Arts. 5472a, 5472b, R. C. S.; *Smith v. Texas Co.*, 53 S. W. (2d) 774; *Wilson v. Hinton, et ux.*, 116 S. W. (2d) 365; 29 C. J. 483, Sec. 22.

0-1916 To: O. J. S. Ellingson, General Manager, Texas
Prison System
Date: February 10, 1940

The advisability of selling prison-made chairs to the American Red Cross, as well as the terms upon which such sale should be made, lie exclusively in the discretion of the Texas Prison Board. Art. 6166e, V. A. C. S.

0-1917 To: E. G. Moseley, Civil District Attorney, Dallas
Date: February 14, 1940

Money found in gambling devices may legally be seized along with the devices, and neither the manufacturer, owner, operator or player may recover any part or portion of the money after seizure and order of the court placing same in legal custody of the clerk of the court.

The money so seized and deposited with the clerk of the court is properly termed "in custodia legis," and should be retained until the legislature by appropriate action designates by statute the use or function to which it should be applied.

Arts. 636, 637, 368, P. C. (See opinion for citation of additional authorities.)

0-1918 To: E. G. Moseley, Civil District Attorney, Dallas
Date: February 27, 1940

The commissioners' court is not authorized to use county funds for the payment of gasoline and oil, repairs, or storage charges on automobiles privately owned and driven by the commissioners to and from their respective districts on county business; nor is said court authorized to expend county funds for the purchase of automobiles to be used by the commissioners. Art. 2340, V. A. C. S.; Acts 1933, 43rd Leg., Ch. 236; Opinions 0-541, 0-752, 0-996, 0-1335. (See opinion for citation of additional authorities.)

0-1919 To: Mrs. Willie O'Neal, County Auditor, Carson
County
Date: February 23, 1940

After the commissioners' court has satisfactorily determined from all reasonable sources that one needing support as a pauper is a resident of the county and unable to support himself, it is within the authority of the court to furnish necessary aid without requiring a pauper's affidavit executed by such person. Art. 2351, Sec. 11, V. A. C. S.

It is within the power and authority of the commissioners' court to determine whether or not the employment of an assistant to a county home demonstration agent is "necessary to the conduct and carrying on of cooperative demonstration work" in the county under the provisions of Art. 164, V. A. C. S. Art. V, Sec. 18, Constitution of Texas.

The commissioners' court is not authorized to employ a county welfare worker. Art. V, Sec. 18, Constitution of Texas; *Bland v. Orr*, 90 Tex. 495.

The salary paid to the county judge for acting as superintendent of public instruction is to be included in calculating the maximum amount that the county judge is allowed to draw under Art. 3883, V. A. C. S. Opinion 0-67.

0-1920 To: F. C. Branson, Commissioner, Department of Banking
Date: February 5, 1940

The Merchants & Employees Industrial Bank of Houston, Texas, has effectively adopted the additional powers provided and authorized to Morris Plan Banks under S. B. 268, Acts 46th Leg., and is now a legally organized bank under the laws of this State with power, among others, "to receive money on time deposits."

0-1921 To: Jack Weich, County Attorney, Cameron County
Date: February 28, 1940

Sec. 22 of Art. 1269k, V. A. C. S., commonly known as the "Housing Authorities Law," is a constitutional exemption from taxation; therefore, property owned by the Housing Authority of Brownsville, Texas, is entitled to exemption from state and county ad valorem taxes.

Art. VIII, Sec. 2; Art. XI, Sec. 9, Constitution of Texas; Art. 1269k, V. A. C. S.; *Bland, et al., v. City of Taylor, et al.*, 37 S. W. (2d) 291; *New York City Housing Authority v. Muller*, 1 N. E. (2d) 153; *McNulty v. Owens*, 199 S. E. 425; *Wells v. Housing Authority of City of Wilmington, et al.*, 197 S. E. 693.

0-1922 To: R. S. Wyche, County Auditor, Gregg County
Date: February 23, 1940

The commissioners' court has no authority to contract for a public liability insurance policy for the county hospital. Art.

III, Sec. 52, Constitution of Texas; *Nussbaum v. Bell County*, 76 S. W. 430; *Angelina County v. Bond*, 17 S. W. (2d) 338; *Floria v. Galveston County*, 55 S. W. (2d) 540; *Bryan v. Liberty County*, 299 S. W. 303; Opinion 0-353.

0-1923 To: A. M. Turney, County Attorney, Brewster
County
Date: February 9, 1940

The County-District Clerk and the Sheriff-Tax Assessor-Collector of Brewster County may not legally pay their deputies the additional amount of \$200.00 annually even though such deputies have previously served the county for more than two continuous years. Art. 3902, Sec. 1, 1-a, V. A. C. S.

0-1925 To: M. O. Flowers, Secretary of State
Date: February 16, 1940

Such companies as the John Hancock Mutual Insurance Company and the Jefferson Standard Life, Health and Accident Insurance Company are not subject to the Real Estate Dealers License Act. H. B. 17, Acts 46th Leg.; Arts. 4725, 4818, V. A. C. S.

0-1926 To: L. L. Geren, County Attorney, Limestone
County
Date: February 20, 1940

Members of the commissioners' court are not entitled to expense money for trips out of the county on official business of the county. 11 Tex. Jur., pp. 563-565; Letter Opinions Jan. 23, 1935, and March 15, 1938; Opinions 0-752, 0-899, 0-996, and 0-1345.

0-1928 To: J. C. Gowdy, County Auditor, Wichita County
Date: February 21, 1940

The commissioners' court has authority to pay office rent for space for supervisors of the State Department of Public Welfare. Art. 2372e-2, Sec. 1, R. C. S.; H. B. 885, Acts 46th Leg.

0-1930 To: E. L. Shelton, County Auditor, Johnson County
Date: February 27, 1940

Neither the Commissioners' Court of Johnson County nor the District Attorney of the 18th Judicial District has authority to

employ a stenographer for said district attorney and expend either county or state funds for said purpose. Art. 3886f; 199, Sec. 18, R. C. S.

Neither the Commissioners' Court nor the County Attorney of Johnson County has authority to employ a stenographer for said county attorney and expend county funds for said purpose. Art. 3902, 3899, R. C. S.; Opinions 0-1620, 0-1874.

The County Judge of Johnson County may, with the approval of the commissioners' court, employ a stenographer at a salary not to exceed \$1,200.00 per annum; such salary is payable out of the general fund of the county. Art. 3912e, Sec. 13, Subdiv. (a), R. C. S.; Opinion 0-1449.

0-1931 To: Marvin Hall, Fire Insurance Commissioner,
Board of Insurance Commissioners

Date: February 19, 1940

The Board of Insurance Commissioners is not authorized to grant a general agent's license to an organization whose business is insurance management when that organization has assumed or is contemplating assuming corporate entity. Arts. 1302, 5062A, V. A. C. S.

0-1932 To: Ned McDaniel, County Attorney, Wichita
County

Date: February 14, 1940

Under the facts submitted to this department, the taxi owner in question did not violate Art. 911a, V. A. C. S., and Art. 1690a, V. A. P. C. (pertaining to motor bus transportation), in carrying his passenger from Wichita Falls to New Mexico. *Hoffman v. State*, 20 S. W. (2d) 1057; *Commercial Credit Company v. Groseclose*, 66 S. W. (2d) 709.

0-1933 To: Pat Beene, County Attorney, Andrews County

Date: February 29, 1940

The commissioners' court cannot legally allow an item of \$600.00 as car expenses to the sheriff when the sheriff fails to make the monthly expense reports as required by Art. 3899, V. A. C. S.; *Pierson, Justice of the Peace, et al., v. Galveston County*, 131 S. W. (2d) 27.

The county tax assessor-collector is responsible for a loss of money due to robbery. *Boggs v. The State*, 46 Tex. Rep. 10; *American Indemnity Company, et al., v. State*, 104 S. W. (2d) 68; 61 C. J. 1023.

The county commissioners cannot legally pass an order allowing themselves the full maximum under Art. 2350, V. A. C. S., when their time slips which were passed did not reach the maximum. 34 Tex. Jur. p. 529.

0-1935 To: A. E. Hickerson, County Auditor, Montgomery County
Date: February 24, 1940

The commissioners' court is without authority to pay out of the general fund of the county the fee of attorneys employed to defend a suit contesting a road bond election deed in a precinct of the county. *Winder Bros. v. Sterling*, 12 S. W. (2d) 127, 14 S. W. (2d) 802; *Gibson, et al., v. Davis, et al.*, 236 S. W. 202; *Stokes, et al., v. Paschall*, 243 S. W. 611; Art. 752q, V. A. C. S.

0-1940 To: John R. Shook, Criminal District Attorney, San Antonio
Date: February 8, 1940

The commissioners' court is without authority to pay inspectors and employees of the county engaged for and in behalf of public health work during the time which employees are absent from the county taking special training required by regulations of the State Health Officer. Art. III, Sec. 53, Constitution of Texas; Art. 4418f, V. A. C. S.; *McCalla v. City of Rockdale*, 246 S. W. 654; *Terrell v. King*, 14 S. W. (2d) 786; *Madden v. Hardy*, 50 S. W. 926; *Eastland County v. Hazel*, 288 S. W. 518; 11 Tex. Jur. p. 564; 34 Tex. Jur. pp. 508, 531, 535.

0-1943 To: John E. Taylor, Chief Supervisor, Railroad Commission of Texas
Date: February 9, 1940

The question whether a proration order shall be rescinded must be determined by the Railroad Commission itself at a meeting of its members within the territorial limits of the State of Texas, at which meeting a quorum of the commissioners are present; the exercise of this power cannot be delegated, but must be exercised by the commission as such.

When the decision of the commission with respect to the adoption or rescission of a proration order has been lawfully made, the signing of the order itself by the individual commissioners becomes a mere mechanical or ministerial act, which may be delegated by the commissioners. The selection of persons who shall be authorized to affix their respective signatures

is a judgment or discretion to be exercised by the individual commissioners; hence, no meeting of the board for this purpose is required; and since the authority to delegate to another the function of signing his name is a power or privilege possessed by the commissioner as a natural person, that authority may be exercised by the commissioner at a time when he is beyond the territorial limits of the State. Opinion 0-1507.

Art. XVI, Sec. 30, Constitution of Texas; Arts. 6444-6447, R. C. S.; 46 C. J. 1032, 1034; 22 R. C. L. 456; 34 Tex. Jur. 457. (See opinion for citation of additional authorities.)

0-1944 To: Olan R. Van Zandt, Chairman, Joint Legislative Advisory Committee
Date: February 27, 1940

The State Superintendent and the Joint Legislative Advisory Committee exceeded their authority in directing applicants for aid (under H. B. 933, Acts 46th Leg.) to omit the item of receipts of per capita for pupils transferred in from ineligible districts from their list and application for aid.

0-1945 To: M. O. Flowers, Secretary of State
Date: February 23, 1940

Since under Art. 3137, R. C. S., the State Executive Committee shall meet on the third Monday after the fourth Saturday in August, the State Convention should meet on the following Tuesday. Arts. 3138, 3139, R. C. S.

0-1946 To: K. D. Hall, County Attorney, Refugio County
Date: February 14, 1940

School district No. 5 of Refugio County may now legally levy and collect taxes on the 22,000 acres of land added to said district by H. B. 363, Ch. 219, Acts 1925, 39th Leg., R. S., for the purpose of servicing bonds which it now proposes to issue, provided, however, that such bonds and taxes are properly authorized at an election held for that purpose.

0-1948 To: Joe E. Webb, County Attorney, Madison County
Date: February 15, 1940

This opinion deals with the "insurance deposit liability" of the Federal Deposit Insurance Corporation with respect to public funds in a county depository bank and holds:

1. Such liability exists to the maximum of \$5,000.00 to each legal entity owning the deposit where such ownership is shown by the bank's books.

2. The same right of protection is afforded a real or legal beneficiary of such deposit where such relation is shown by the bank's books.

3. The real owner of the deposit is protected by such insurance to the extent of the deposit for him, not to exceed the maximum of \$5,000, where the bank's books disclose this right, whether that of a political subdivision or a beneficiary of a legal trust. *Federal Deposit Insurance Corporation v. Casady, Town Treasurer*, 106 F. (2) 784.

0-1949 To: Joe E. Webb, County Attorney, Madison County
Date: February 15, 1940

This opinion holds the same as Opinion 0-1948.

0-1950 To: Julian Montgomery, State Highway Engineer
Date: February 14, 1940

The motor vehicles operated by the "Alamo Freight Lines" must be registered in Kimble County, Texas, the residence of the owner of said lines. Art. 6675a-2, V. A. C. S.

0-1951 To: Railroad Commission of Texas
Date: February 21, 1940

Special rangers may legally accept payment of money as salary or to cover expenses from a railroad corporation. Art. 4413 (11), Sec. 5, V. A. C. S.

0-1952 To: Nolen L. Sewell, County Attorney, Wise County
Date: February 27, 1940

The commissioners' court is without authority to employ county funds for the construction of a building to house various governmental agencies not connected with the county with the object of collecting rentals to discharge the indebtedness. Art. VIII, Sec. 9, Art. V, Sec. 18, Constitution of Texas; Arts. 1603; 1605; 2351, Sec. 7; 2352, V. A. C. S.; Opinions 0-591, 0-1083, 0-1260, 0-1299, and 0-1799.

0-1954 To: O. E. Gerron, County Auditor, Ector County
Date: February 23, 1940

The brother-in-law of a county commissioner is eligible to hold the position of deputy in the sheriff-tax assessor-collector's office. Art. 432, P. C.; Art. 3902, R. C. S.; Letter Opinions Feb. 9, 1932, March 2, 1935, and Dec. 29, 1936; Opinions 0-480, 0-875.

0-1955 To: Don D. Parker, County Auditor, Eastland
County
Date: February 23, 1940

H. B. 236, Acts 46th Leg., pertaining to traveling expenses of county commissioners in certain counties, is a local or special law and is, therefore, unconstitutional and void. Art. III, Sec. 56, Constitution of Texas; *Altgelt v. Gutzeit*, 201 S. W. 400; *Smith v. State*, 49 S. W. (2d) 739; Opinions 0-18, 0-364, 0-462, and 0-899. (See opinion for citation of additional authorities.)

0-1957 To: R. T. Burns, County Attorney, Walker County
Date: February 20, 1940

S. B. 308, Acts 46th Leg., which sets the compensation of county officers in counties having a population of 18,528 to 18,535, is unconstitutional and void as a special or local law; therefore, the salary and excess fees of the county attorney are governed by Art. 3883, Sec. 1, and Art. 3891, V. A. C. S. Art. III, Sec. 56, Constitution of Texas. (See opinion for citation of additional authorities.)

0-1958 To: Jerry Sadler, Member, Railroad Commission of
Texas
Date: February 10, 1940

The general rule that no rule, regulation, or order can be entered by the Railroad Commission, or renewed or extended by it, except after hearing upon 10 days' notice to interested parties is subject to the following exceptions:

1. The commission, without notice and hearing, may revoke or rescind any rule, regulation, or order promulgated by it.

2. If the commission finds an emergency to exist, it may enter an emergency rule, regulation, or order without a hearing; but such emergency order will be effective for only 15 days.

3. An order previously entered by the commission following notice and hearing may be changed or modified by amendment without additional notice and hearing if the subject matter of the amendment was considered at the hearing. Art. 6036a, V. A. C. S.

0-1960 To: Wayne Lefevre, County Auditor, Clay County
Date: February 27, 1940

In those counties subject to the laws regulating the inspection of hides and animals, as provided in Arts. 6972 through 7008, V. A. C. S., as amended, the fees of an inspector are payable directly to the inspector by the owner or owners of the animals or hides which are inspected.

Where a county tax assessor-collector erroneously issues a certified statement that there are no delinquent taxes against certain property, the commissioners' court upon discovery of the error does not have the authority to deduct the interest and penalties accrued on the delinquent taxes which were mistakenly covered in the certificate and which are still due. Art. 7258a, V. A. C. S.; *City of San Angelo v. Deutsch*, 91 S. W. (2d) 308; *State v. Davidson*, 280 S. W. 292.

0-1962 To: Vincent Tudor, County Attorney, Hale County
Date: February 15, 1940

The Commissioners' Court of Hale County does not have the authority to offer the sum of \$100,000.00, or any other sum, for the discovery and development of the first well in the county capable of producing oil in commercial quantities. Art. V, Sec. 18; Art. XVI, Sec. 59a, Constitution of Texas; Art. 2351, V. A. C. S.; *Commissioners' Court v. Wallace*, 15 S. W. (2d) 535; 11 Tex. Jur. p. 563.

0-1963 To: E. P. Jennings, County Auditor, Hardin County
Date: February 21, 1940

It is mandatory that the justice of the peace serve as local registrar under the Vital Statistics Law. Art. 4477, Secs. 3 and 23, R. C. S.; Art. 781a, P. C.

0-1964 To: G. H. Slaughter, County Attorney, Martin
County
Date: February 21, 1940

Art. 2927, R. C. S., in its six months residence and citizenship requirements of candidates for public office refers to the general

or special elections, and not to the party primary elections. Arts. 2930, 3100, R. C. S.; *Koy v. Schneider*, 218 S. W. 279, 221 S. W. 880.

0-1967 To: Walker Carson, County Attorney, Hudspeth County
Date: February 20, 1940

The commissioners' court may not legally expend county funds for the hospitalization of a deputy sheriff shot while in the line of duty. 11 Tex. Jur. pp. 563, 564, 565.

0-1969 To: Homer Garrison, Jr., Director, Department of Public Safety
Date: February 23, 1940

If a motor vehicle is operated by a travel bureau in transporting persons in the manner set out in Art. 6675a-1, V. A. C. S., for compensation, it would be charged for the motor bus license as provided in such act; it would likewise be subject to other regulatory statutes pertaining to the operation of motor vehicles in such manner.

0-1970 To: George W. Cox, State Health Officer
Date: February 27, 1940

The traveling expenses of the personnel of the Board of Health incurred in participating and conducting the Short School for Water Works and Sewage Plant Operators and the Milk Seminar at Dallas may legitimately be paid from public funds. Art. 4419, V. A. C. S.; S. B. 427, Acts 46th Leg.; Opinions 0-1195, 0-1737.

0-1971 To: R. S. Wyche, County Auditor, Gregg County
Date: February 27, 1940

The commissioners' court does not have authority to purchase a piano and place same in a "county public auditorium" to be used on public occasions. 11 Tex. Jur., pp. 563, 564, 565, 566.

0-1972 To: R. L. Armstrong, County Auditor, Tom Green County
Date: February 23, 1940

The commissioners' court is without authority (1), to purchase or rent sewing machines for use in the W. P. A. sewing

room project; (2), to purchase groceries or other supplies to be used for demonstration purposes in connection with W. P. A. housekeeping aid project; (3), to furnish typewriters and adding machines for or to repair such machines used in state or federal relief agencies; (4), to employ clerical help for state and federal relief agencies; (5), to participate with county funds in the construction of a building to house federal or state relief agencies; or (6), to participate with county funds in the carrying on of a charitable organization for the aid of indigent mothers. Arts. 2351; 2372e, Sec. 1; 2372e-2, V. A. C. S.; Letter Opinion April 27, 1937; Opinion 0-281; *Commissioners' Court v. Wallace*, 15 S. W. (2d) 535.

0-1976 To: K. D. Hall, County Attorney, Refugio County
Date: February 23, 1940

The commissioners' court is without authority to furnish or equip an office for a justice of the peace except where the justice precinct contains more than 75,000 inhabitants. Arts. 1603, 2379, 3899b, V. A. C. S.; *Reynolds, Justice of the Peace, v. Tarrant County*, 14 S. W. 580; Conference Opinion 2328; Letter Opinions Jan. 9, 1933, and Sept. 28, 1932.

0-1978 To: Charley Lockhart, State Treasurer
Date: February 27, 1940

A deed of trust securing an obligation insured by the Federal Housing Administration is subject to the stamp tax levied by Art. 7047e, V. A. C. S. *James v. Dravo Construction Company*, 302 U. S. 134; Letter Opinions May 12, 1938, Aug. 8, 1938, Sept. 10, 1938.

0-1979 To: T. J. Crowe, Secretary, Texas State Board of
Medical Examiners
Date: February 27, 1940

Under the facts submitted to this department the Texas State Board of Medical Examiners is without authority to issue to the applicant in question a verification license to practice medicine in Texas. Acts 1901, 27th Leg., Ch. 12, p. 12; Acts 1931, 42nd Leg., Ch. 37, p. 55.

0-1980 To: George H. Sheppard, Comptroller of Public
Accounts
Date: February 27, 1940

The Limitation of Payments clause in the departmental appropriation bill does not apply to the special rider appropriating

fees collected under H. B. 547, Acts 42nd Leg., to the Comptroller for his use in making audits as provided in said act. S. B. 427, Acts 46th Leg.; Opinion 0-1321.

0-1983 To: Charley Lockhart, State Treasurer
Date: February 29, 1940

The State Treasurer would be required to release the bonds of Bee County Common School District Number 3 called for payment irrespective of the source from which the money is derived and which is to be used in redeeming such bonds. Art. 2787a, V. A. C. S.; *Dallas County v. Lockhart*, 96 S. W. (2d) 60.

0-1985 To: Burl Brittain, County Auditor, San Patricio County
Date: February 29, 1940

The Grand Jury Bailiffs of San Patricio County are not entitled to traveling expenses or mileage fees over and above the \$4.00 per diem. Art. 1058, C. C. P.; Opinion 0-1124.

0-1986 To: F. J. Moss, County Auditor, Montague County
Date: February 29, 1940

H. B. 876, Acts 46th Leg., which fixes the compensation of county commissioners in certain counties, and H. B. 1122, Acts 45th Leg., which provides for the appointment and compensation of county auditors in certain counties, are unconstitutional as local or special laws. Art. III, Sec. 56, Constitution of Texas; *Altgelt v. Gutzeit*, 201 S. W. 200; *Smith v. State*, 49 S. W. (2d) 739; *Wood v. Marfa Independent School District*, 123 S. W. (2d) 429; Opinions 0-18, 0-364, 0-462, 0-899.

0-1989 To: George A. Hight, Chief Accountant, Board of County and District Road Indebtedness
Date: February 29, 1940

Road bonds voted by a defined road district prior to January 2, 1939, may not now be issued and the proceeds expended in the construction of a designated state highway and be eligible for participation in the County and Road District Highway Fund. H. B. 688, Secs. 3, 6, Subsec. (a), Acts 46th Leg.; *Gulf States Utilities Company v. State*, 46 S. W. (2d) 1018; Opinion 0-1334.

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