

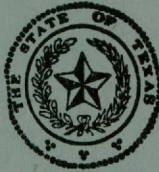
TEXAS STATE DOCUMENT COLLECTION
MONTHLY REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF TEXAS



GROVER SELLERS
ATTORNEY GENERAL

MONTHLY REPORT
OF THE
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OPINIONS RENDERED
OCTOBER 1, 1945
TO
OCTOBER 31, 1945



GROVER SELLERS
ATTORNEY GENERAL

0-6568 To: Theophilus S. Painter, Acting President, University of Texas
Date: October 29, 1945

Under the provisions of H. B. 740, Acts 1945, 49th Leg., R. S., which transfers control of Galveston State Psychopathic Hospital from the State Board of Control to the Board of Regents of the University of Texas, the Legislature also intended a change in the fundamental purpose of the institution from a state-supported charity institution, with the primary function of admitting all committed to it by the courts, whether indigent or able to pay, to a hospital to be used primarily as a school, with authority to choose the patients admitted thereto, whether paying or indigent, to be supported jointly by the State, the paying patients, and donations and gifts. Therefore, the courts of this State do not have authority to commit mental patients to said Galveston State Psychopathic Hospital for temporary treatment not to exceed ninety days.

In cases of emergency, such as when a patient becomes violent or dangerous or in any case where it is deemed to the best interest of the insane person or society at large that he be restrained, the Galveston State Psychopathic Hospital has the lawful power to restrain such patient against his will until he can be committed lawfully to a state eleemosynary institution for the care of the insane and other mentally ill persons.

Acts 1943, 48th Leg., R. S., H. B. 666; Acts 1945, 49th Leg., R. S., H. B. 173; Arts. 3174, 3184-3201, 3192, 3192a, V. A. C. S.; Opinion 0-685.

0-6609 To: Nelson Greeman, Secretary, State Board of Examiners in Optometry
Date: October 13, 1945

Under the provisions of H. B. 187, Acts 1945, 49th Leg., R. S., the final date for registration with the State Board of Examiners in Optometry for apprenticeship to practice optometry of persons other than those in the Armed Services was July 2, 1945. The registration date for those in the Armed Services is six months after the termination of their Federal service, training, or education. This six months limitation period is mandatory, and the Board is not authorized to accept as apprentice persons applying at a later date. Art. 4557, V. A. C. S.

0-6676 To: C. H. Cavness, State Auditor
Date: October 31, 1945

This opinion concerns the salaries of criminal district attorneys or county attorneys performing the duties of district attorneys and their assistants in the following counties: Bexar, Brazos, Collin, Cooke, Dallas, Denton, Eastland, Ellis, Falls, Fannin,

Freestone, Galveston, Grayson, Gregg, Harris, Harrison, Hidalgo, Hill, Jefferson, Kaufman, Lamar, Limestone, McLennan, Milam, Montague, Navarro, Parker, Red River, Robertson, Rusk, Tarrant, Van Zandt, and Williamson.

An assistant county attorney must be a duly licensed attorney-at-law, and abstracters, tax deputies and clerks, who are not licensed attorneys, cannot be carried on the payroll as assistants.

Art. 3912e, Sec. 13(b), V. A. C. S., does not fix any time for the payment of the State's apportionment into the County Officers' Salary Fund; however, it is suggested that such apportionment be made at the end of each four months—after April 30, August 31, and December 31, the latter one to be for the preceding four months and to adjust any discrepancies or errors in the allocation of the apportionments during the year ending on that date.

Where counties have been underpaid in allocations of State apportionment prior to the calendar year 1945, such error cannot be adjusted out of a current or future apportionment but it would be necessary for the Legislature to make a specific appropriation for such purpose. Where counties have received more in past apportionments than they were entitled to, the State would have a claim against such counties for the sums so received.

Acts 1937, 45th Leg., R. S., S. B. 374; Acts 1945, 49th Leg., R. S., H. B. 241, H. B. 798, H. B. 849, S. B. 123, S. B. 246, S. B. 279, and S. B. 855; Arts. 199, Subdiv. 124, Secs. 21, 22(a), 320a-1, 326-k-7, k-9, k-11, 326q, 331, 332, 3883.1, 3883.2, 3883.3, 3883.4, 3883.5, 3883.6, 3891, 3902, 3902.1, 3902.2, 3902.3, 3902.4, 3902.5, 3912e, Secs. 13, 13(b), 15, 19, 19(d), 19(f), 19(f-1), 3912e-1, 3912e-2(b), 3912e-2(f), 3912e-7, V. A. C. S.; Arts. 52-1, 52-24, 52-43, 52-81, 52-160, Sec. 11, 52-161, Sec. 12, C. C. P.; Opinions 0-2546-A, 0-2560, 0-2748, 0-3158, 0-5001, 0-5024, 0-6226, 0-6374, 0-6484, 0-6499, 0-6728; Letter Opinion of September 14, 1936. (See opinion for citation of additional authorities.)

0-6697 To: Weaver H. Baker, Chairman, Board of Control
Date: October 31, 1945

Case histories which are in the possession of the Board of Control or the eleemosynary institutions of this State relating to a patient or child ward are public records and as such are subject to the right of inspection by the public, except in so far as these records may relate to or disclose information concerning venereal diseases named in Art. 4445, V. A. C. S. However, the Board members may require a showing of sufficient interest on the part of the demanding party before the inspection is allowed. Arts. 2338-1, 3175-2, 3176-1, 3747, 3769b, 4445, Secs. 1, 8, 4477, Rule 50a, V. A. C. S.; Opinions 0-2122, 0-2241, 0-2416, 0-4737. (See opinion for citation of additional authorities.)

0-6709 To: Bayne Satterfield, Firemen's Pension Commissioner.
Date: October 24, 1945

The monthly payments and allowance to the guardian of each child under Art. 6243e, Sec. 12, V. A. C. S., are to be considered separately. Art. 4112a, V. A. C. S.

0-6712 To: Charles R. Martin, County Auditor, Harrison County
Date: October 3, 1945

A county commissioner in approving the construction with county material and county labor of a side bridge or culvert on a county or state right-of-way for the purpose of making a private entrance to private property is not by so doing violating the penal provisions of H. B. 80, Acts 1945, 49th Leg., R. S. Said penal act does not alter, change or affect the powers and duties of the commissioners' court as fixed by the constitution and statutes. Arts. 2351, 6727, 6728, 6746, 6747, 6751, 6753, 6766, 6771, 6772, and 8161, V. A. C. S.

0-6722 To: John Winters, Executive Director, Department of Public Welfare
Date: October 24, 1945

The money available to the Department of Public Welfare in the Blind Assistance Fund for each fiscal year of the ensuing biennium beginning September 1, 1945, is \$820,000.00. The 1943 appropriation of \$700,000.00, both by statute and by constitutional prohibition could not extend for more than two years. Art. VIII, Sec. 6, Constitution of Texas; Acts 1941, 47th Leg., R. S., H. B. 8, Art. XX, Sec. 2, Subsecs. 1; Acts 1943, 48th Leg., R. S., H. B. 499; Acts 1945, 49th Leg., R. S., S. B. 317. (See opinion for citation of additional authorities.)

0-6740 To: Game, Fish and Oyster Commission
Date: October 19, 1945

The only statutory authority for the deferred payment of any fine or costs is that given by virtue of a deferred judgment.

If a justice of the peace refuses or negligently fails to issue any and all writs allowed by law to enforce a collection of a judgment entered by him in a criminal case and as a result thereof same was not collected, he and his bondsmen would be liable therefor.

If a partial payment is accepted by the court to be applied on the fine and costs when judgment of conviction is finally rendered under the terms of Art. 698, C. C. P., or in a case when defendant is confined in jail under a judgment of conviction for a pecuniary fine and makes such payments on such fine and costs, then such

money should be applied first on the fine, and, after same is fully satisfied, then on the costs. In case the judgment is deferred, then such fine does not come due the Game, Fish and Oyster Commission until the judgment is finally entered.

Until a final judgment is entered in misdemeanor cases where there is returned a verdict or a plea of guilty is entered and the punishment assessed is by fine only, the court would have the right, upon proper motion of the district or county attorney, to dismiss same, regardless of whether or not the fine, in whole or in part, has been collected.

Arts. 1616, 1619, 1622, 2373, 4025, R. C. S.; Arts. 577, 698, 787, 917, 918, 919, 950, 951, V. A. C. C. P.; Art. 934a, Sec. 8, V. A. P. C.; Opinions 0-5334, 0-6801; Letter Opinion of September 19, 1932, addressed to Moore Lynn, State Auditor.

0-6747 To: Homer Garrison, Jr., Director, Department of
Public Safety
Date: October 26, 1945

S. B. 119, Acts 1943, 48th Leg., R. S., which provides that under certain conditions, persons seventeen years of age and over may be allowed to drive school buses until the conclusion of the present War, is still in effect and will not expire until the Congress of the United States or the President, by authority of Congress, formally proclaims the termination or conclusion of the present war. Licenses issued under the provisions of S. B. 119, supra, will terminate upon the expiration of the emergency provisions of said S. B. 119. Art. 6687b, Sec. 5, V. A. C. S. (See opinion for citation of additional authorities.)

0-6752 To: William M. Whyburn, President, Texas Techno-
logical College, Lubbock
Date: October 19, 1945

Upon discharge by the United States Government, individuals who had enlisted in the Army Reserve are entitled to free tuition in the State schools of Texas. Acts 1943, 48th Leg., R. S., S. B. 81; Art. 2654b, Secs. 1, 2, V. A. C. S.; 10 U. S. C. A., Sec. 2; 50 U. S. C. A., Secs. 301-318; Opinion 0-6077-A.

0-6753 To: E. N. Jones, President, Texas College of Arts and
Industries, Kingsville
Date: October 5, 1945

Surplus money in the bond fund for retirement of revenue bonds issued by the Texas College of Arts and Industries cannot be invested in Series F., Government Bonds, since the bond contract in question between said school and the Northwestern Mutual Life Insurance Company of Milwaukee not only does not authorize such investment but, to the contrary, limits the use of the money in the bond fund to the payment of principal and in-

terest. Arts. 2603c, Sec. 3, 2909a, Sec. 3, V. A. C. S. (See opinion for citation of additional authorities.)

0-6765-A To: Thomas E. Robertson, County Attorney, Camp
County
Date: October 15, 1945

Under the provisions of H. B. 642, Acts 1945, 49th Leg., R. S., the county clerk is authorized to charge the full fee of seventy-five cents (75¢) for "filing and registering and entering satisfaction and release of each chattel mortgage" at the time of filing of the chattel mortgage. When such a chattel mortgage was "filed and recorded" prior to the effective date of H. B. 642, the county clerk is authorized to charge a fee of 25¢ for "entering satisfaction" of such a mortgage after the effective date of H. B. 642. Arts. 3930, 3932, 5495, V. A. C. S.; Opinion 0-6765 overruled in so far as conflicts.

0-6782 To: R. C. Neaves, County Auditor, Grayson County
Date: October 11, 1945

The enactment of the penal provisions of H. B. 80, Acts 1945, 49th Leg., R. S., does not affect the powers and authority of the tax assessor-collector or his deputies as presently or heretofore permitted by the constitution and statutes. Therefore, said H. B. 80 does not preclude the retention of fees collected by the tax assessor-collector or his deputies as a notary public, provided such service as a notary public does not interfere with the orderly discharge of their regular and legally authorized functions.

The tax assessor-collector or his deputies would be authorized to take the affidavits required by Sec. 33 of the Certificate of Title Act in the capacity of notary public.

In counties having a population of less than 500,000 the tax assessor-collector or his deputy is not authorized to charge any fee for taking and certifying to affidavits incident to the registration of motor vehicles when such affidavits are of the character which said official is authorized to take under Art. 7246a, V. A. C. S.

The constitution and statutes do not make it an official function of the tax assessor-collector or his deputies to prepare lists of poll tax payers or lists of automobile owners for the purpose of general or private distribution, nor do they provide for any fee or charge in connection therewith. Therefore, when the tax assessor-collector or a deputy knowingly uses or permits the use of any county equipment or supplies or the labor or services of any person being paid by the county for the private profit of said collector or his deputies, such act or acts would be in violation of the provisions of H. B. 80, supra. Art. 7246a, V. A. C. S.; *Harris v. Hall*, 172 S. W. (2d) 691; *Nueces County v. Currington*, 139 Tex. 297, 162 S. W. (2d) 687; Opinions 0-33 and 0-5577.

0-6783 To: Tom N. Cope, County Attorney, Cass County
Date: October 23, 1945

Under the provisions of H. B. 415, Acts 1945, 49th Leg., R. S., county courts, regardless of whether or not their jurisdiction in civil and criminal cases has been transferred to district courts, have the power and authority to enter an order requiring the State Registrar to issue certified copies of a birth or death certificate wherein a child or an adult is stated to be illegitimate. Art. 4477, Rule 47a, Sec. 25, Rule 51A, V. A. C. S.

0-6789 To: Alfred M. Clyde, Criminal District Attorney, Tarrant County
Date: October 3, 1945

Persons fishing in the channel of the Trinity River between Eagle Mountain Lake and Lake Worth proper should be required to have a fishing license when the height of the waters of Lake Worth is sufficient to back the waters of the river up to Eagle Mountain Lake Dam. However, when there is no water impounded by Lake Worth for a distance below Eagle Mountain Lake Dam, fishing in said waters does not require a special Lake Worth-Eagle Mountain fishing license. Acts 1941, 47th Leg., Ch. 205. (See opinion for citation of additional authorities.)

0-6791-A To: Laverne McCann, County Attorney, Hockley County
Date: October 19, 1945

The Commissioners' Court of Hockley County has no authority to grant to a gas company a right-of-way to lay a pipe line under or over a county road, but such gas company by virtue of Art. 1436, V. A. C. S., has such authority by direct grant from the Legislature.

As the Commissioners' Court has no authority to grant such right-of-way or easement, the county necessarily could not assume any obligations in the way of public liability and could not assume any liability toward the land owners who are paying taxes on land traversed by said company's pipe line.

Arts. 1435, 2351, V. A. C. S. Opinions 0-1805, 0-2442, 0-5726; Opinion 0-6791 overruled and withdrawn. (See opinion for citation of additional authorities.)

0-6801 To: Otto P. Moore, County Attorney, Colorado County
Date: October 22, 1945

In a criminal case where the accused has suffered some punishment under the judgment of the court, the county judge is powerless to set aside such a judgment entered by him at the same term of court, unless at the instance or on motion of the defendant. (See opinion for citation of authorities.)

0-6813 To: John L. Green, Certificate of Title Division, Highway Department
Date: October 4, 1945

Where storage charges have accumulated in cases of abandoned automobiles and motorcycles, which presumably have been stolen but the owners of which cannot be located, the garage-keepers will have a lien on such vehicles for storage charges and may file suit in a court of competent jurisdiction to foreclose same. If said vehicles are properly sold at such a foreclosure sale, the Highway Department would be authorized to issue certificates of title upon evidence of such sale. If there is a balance of proceeds from the foreclosure sale, after the lien and court costs have been paid, and the owner fails to claim same, it shall be paid to the county treasurer of the county in which said property is held. Arts. 1436-1, 5502, 5504, 5505, V. A. C. S.; Arts. 933, 934, 938, C. C. P. (See opinion for citation of additional authorities.)

0-6815 To: A. C. Winborn, District Attorney, Houston
Date: October 9, 1945

A foreign corporation with a permit to do business in this State, incorporated for the purpose of lending money, purchasing, selling and dealing in notes, bonds and securities, but without banking and discount privileges, falls within the classification of "loan brokers" as defined in Art. 6165a, V. A. C. S., where it pursues the business of lending money upon interest, taking as security therefor chattel mortgages on household furniture. *Harvill v. State*, 188 S. W. (2d) 869, writ of error refused.

0-6818 To: Dr. W. A. Davis, State Registrar, Bureau of Vital Statistics, Board of Health
Date: October 9, 1945

The convention between the United States and Mexico, which became effective on July 1, 1943, does not contain any exemption of consular officers from payment of statutory fees for copies of death or birth records as provided in Article 4477, Rule 54a, V. A. C. S.

0-6819 To: John R. Shook, Criminal District Attorney, Bexar County
Date: October 2, 1945

Time warrants cannot be authorized and issued under the following conditions: (1) before a debt has actually been created; (2) to be payable out of the general fund for a hospital created and to be maintained out of a special fund levy when the total of the general fund levy and hospital levy exceed the 25¢ levy provided by the Constitution; (3) to be payable out of the general fund proceeds of which time warrants will be trans-

ferred to the constitutional jury fund; and (4) to be payable out of the general fund, the revenue of which will be transferred to an object or purpose not included in the 1944-45 budget, but which object or purpose was set up in the amended or supplemental budget.

As of the effective date of H. B. 240, Acts 1945, 49th Leg., R. S. (April 9, 1945), Bexar County was no longer subject to the limitations of the general budget law (Art. 689-a), and taxes levied in the year 1945, which became due and payable on October 1, may be used to meet obligations incurred by the amended or supplemental budget for Bexar County covering the period August 1, 1945, to January 1, 1946. The 1946 budget will be based on the balance in said funds as of January 1, plus the anticipated 1946 revenue.

In said amended or supplemental budget, the commissioners' court may increase the salaries of employees, assistants and deputies of officers not named in S. B. 246, Acts 1945, 49th Leg., R. S., for the period August 1, 1945 to January 1, 1946, provided that the salaries shall not be increased beyond the maximum salaries now provided by statute for such positions and provided such increases operate from the date of the order entered by said court and do not exceed 15% based on the March, 1945, payroll for such position.

The commissioners' court cannot in said interim budget increase the appropriations for the officers provided in S. B. 246, supra, beyond 5/12 of the 1944-45 budget, plus 15%, such 15% to be based on the payroll of the particular office as of March 1, 1945.

Art. III, Sec. 56, Art. VIII, Sec. 9, Constitution of Texas; Acts 1945, 49th Leg., R. S., S. B. 339; Arts. 689a, 689a-9-a-11, 2368, 2997a, Sec. 6, 4437a, Sec. 3, 4437b, 7255b, and 7336, R. C. S.; Opinions 0-2324 and 0-2599.

0-6820 To: Drew S. Davis, County Attorney, San Augustine
County

Date: October 13, 1945

The annual tax levy for the payment of outstanding indebtedness of a road district should be made and said tax rate set at the same time that other county taxes are levied. Arts. 752e, k, m, n, 2795, V. A. C. S.; Opinion 0-2364.

The maintenance tax rate of a common school district may be reduced by the board of trustees and the county superintendent and such rate certified to the commissioners' court and levied by said court in accordance with the provisions of Art. 2795, V. A. C. S., provided that said tax was voted by the district as a "maximum tax." In the event said tax rate was voted as a "specific tax," said rate may be reduced by an election held for that purpose under the provisions of Sec. 4, H. B. 800, Acts 1945, 49th

Leg., R. S., and Art. 2794, V. A. C. S. Art. 2784, V. A. C. S.;
Opinion 0-6768.

Surplus funds left in the sinking fund of a common school district after all of the bonded indebtedness has been paid can be transferred to the local maintenance fund. Opinion 0-2657.

0-6828 To: George H. Sheppard, Comptroller of Public Accounts

Date: October 19, 1945

World War II has not yet terminated and will not terminate, in the legal sense, and in the sense that the words "cessation of hostilities" are used in S. B. 130, Acts 1943, 48th Leg., R. S., until the Congress of the United States or the President, by authority from Congress, formally proclaims that it is terminated. 55 Stat., 799, 844; Opinions 0-5566, 0-6258, and 0-6565. (See opinion for citation of additional authorities.)

0-6830 To: W. J. McConnell, President, North Texas State Teachers College

Date: October 8, 1945

A husband and wife or a wife whose husband is employed on the campus may be employed for kitchen service in a dormitory, the income from which is applied solely to maintenance, operation, and liquidation of bonds with which the building was erected, without violating subsection (18) of H. B. 173, Acts 1945, 49th Leg., R. S., since said employment comes within the exceptions set out in subsection (11).

0-6833 To: E. E. Davis, Dean, North Texas Agricultural College

Date: October 13, 1945

The provision of Sec. 4, Art. 2654b-1, V. A. C. S., with respect to the refund to any veteran by the educational institution concerned pertains only to tuition payments. Money paid by a veteran for flight instruction, which is turned over by the college to the flight instructor, is not tuition and should not be refunded. Acts 1945, 49th Leg., R. S., S. B. 338.

0-6834 To: Aileen Mitchell, County Auditor, Fort Bend County

Date: October 18, 1945

Since the commissioners' court has the statutory authority to purchase right-of-ways, said court has the implied authority to issue interest bearing warrants for the purpose of purchasing right-of-ways. The manner of issuing said warrants is controlled by the provisions of Art. 2368a. Emergency warrants can be issued by said court only under provisions of Art. 2368a,

Sec. 5, V. A. C. S. Arts. 6673c, 6674n, V. A. C. S. *Lassiter v. Lopez*, 217 S. W. 373.

0-6836 To: Walter F. Woodul, Member, Board of Regents,
North Texas State Teachers College
Date: October 8, 1945

Under the given facts, the Board of Regents of North Texas State Teachers College may apply "local funds" in the amount of \$28,000.00 to liquidate the balance of the bond issue or issues on the music-orchestra hall, the third story of which is now used as a dormitory, in order to secure the exclusive use of the school building for classroom purposes. Acts 1934, 43rd Leg., 2nd C. S., Ch. 5; Acts 1935, 44th Leg., 2nd C. S., Ch. 459; Acts 1945, 49th Leg., R. S., Ch. 377; Arts. 2603c, 2647, 2654d, 2654d, Subsec. 3, 2909a, Sec. 1, V. A. C. S.; *San Antonio Independent School District v. Water Works Board of Trustees, et al.*, 120 S. W. (2d) 861, error refused; Opinions 0-1273 and 0-1662.

0-6837 To: C. H. Cavness, State Auditor
Date: October 11, 1945

The appropriation to the Firemen's Pension Commissioner contained in the current appropriation bill for the biennium ending August 31, 1947, is valid and should be paid by the State Comptroller and the State Treasurer. Art. III, Secs. 6, 44, 51, Constitution of Texas; Acts 1937, 45th Leg., Ch. 125; Acts 1941, 47th Leg., Ch. 636, H. B. 46, H. B. 1011; Acts 1945, 49th Leg., R. S., S. B. 317; Art. 6243, Secs. 2, 6, 10, 19, V. A. C. S.; Opinions 0-700, 0-3468, 0-3833. (See opinion for citation of additional authorities.)

0-6840 To: State Board of Education
Date: October 6, 1945

Since the Stonewall County courthouse and jail refunding bonds in question were issued under the provisions of Art. 725, R. C. S., and more than five years have elapsed since their issuance, they are now redeemable at the pleasure of the county. *Cochran County v. Mann*, 172 S. W. (2d) 689; *Bexar County v. Sellers, Attorney General*, 178 S. W. (2d) 505; Opinion 0-5879.

0-6841 To: B. Jay Jackson, County Attorney, Hood County
Date: October 20, 1945

Where a purchaser of certain property from the county at a tax foreclosure sale finds a "squatter" occupying such property, the county cannot be required nor would it have any authority to expend any money to pay the cost of removing the "squatter" from the premises. Such an issue would have to be settled

directly between the purchaser and the "squatter." Arts. 3816, 7328, 7330, 7332, 7333, 7345b, Secs. 6, 7, 8, 9, 10, 12. (See opinion for citation of additional authorities.)

0-6842 To: Joe H. Thompson, County Attorney, Randall County

Date: October 9, 1945

A taxpayer is entitled to an exemption of \$3,000.00 of the assessed taxable value of his residence homestead for all State purposes at any time he claims his exemption. Art VIII, Sec. 1-a, Constitution of Texas; Art. 7152, 7193, V. A. C. S.

0-6844 To: Joseph H. Mims, County Attorney, Midland County

Date: October 8, 1945

The judicial policy is to sustain a sheriff's sale when it appears to have been fairly made on the presumption that public officers properly discharge the duties imposed upon them. Therefore, in the fact situation presented, where a sheriff made no return on an order of sale of land on foreclosure of tax lien and gave no deed to the State, but merely penciled on the face of the order that the land had been sold to the State, the State acquired equitable title to the land and can sell it as provided in the statutes. However, the land can be redeemed upon tender of the proper amount by the present owner. Opinions 0-5771 and 0-6685; 18 Tex. Jur., p. 692, 34 Tex. Jur., p. 462.

0-6845 To: Claude Isbell, Secretary of State

Date: October 10, 1945

The Secretary of State is not required to accept for registration as a "trade mark" under Art. 851, R. C. S., the "toy design" under consideration in the form submitted. Arts. 843-851, R. C. S. (See opinion for citation of additional authorities.)

0-6846 To: H. Pat Edwards, Civil District Attorney, Dallas County.

Date: October 19, 1945

H. B. 555, Acts 1945, 49th Leg., R. S., which pertains to salaries of shorthand reporters in all counties of this State with the exception of Bexar and Tarrant Counties, is unconstitutional and void as a local or special law. Art. III, Sec. 56, Constitution of Texas; Art. 2326, V. A. C. S. (See opinion for citation of additional authorities.)

0-6847 To: Perry L. Jones, County Attorney, Travis County
Date: October 29, 1945

S. B. 176, Acts 1945, 49th Leg., R. S., the Public Accounting Act, is constitutional.

The phrase, "at the date of the enactment of this Act," as used in Section 11 of the Act means the date when the law came into existence or June 6, 1945.

The persons named in Section 3 of the Act are eligible to register as public accountants as being in the employ of "any governmental agency," if they meet the other qualifications. They may not do anything prohibited by said Act, but as individuals, they must comply with its provisions. This section applies to part-time employees when they are strictly assistants, deputies, or employees of the officers named therein, but the exemption is not applicable to persons doing auditing work for the state, county, municipality, or quasi-municipality as independent contractors.

This Act would not prohibit duly qualified attorneys-at-law from preparing income tax returns or from performing any service for which he is employed in a legal capacity.

Art. III, Secs. 35, 39, 43, Constitution of Texas; Arts. 31-41, 320a, Sec. 4, R. C. S.; Arts. 1132, 1133, P. C. (See opinion for citation of additional authorities.)

0-6848 To: Bruce L. Parker, County Attorney, Gray County
Date: October 6, 1945

Penalties and interest on delinquent taxes are a valid lien against the land of a deceased landowner. However, such lien attaches only against the particular tract of land upon which the taxes are delinquent, and does not attach to other lands or property of the estate, unless the estate is or becomes insolvent, in which event Art. 7269, R. C. S., would be applicable. Art. VIII, Sec. 15, Art. XVI, Sec. 50, Constitution of Texas. (See opinion for citation of additional authorities.)

0-6850 To: B. T. Walters, County Auditor, Smith County
Date: October 8, 1945

A district clerk is authorized to charge \$0.15 for entering the appearance of each and every party to a suit whether plaintiff, defendant or intervener, provided such party actually makes his appearance in a manner authorized by law and provided the clerk actually makes an entry of such appearance upon the docket with the dates thereof. Acts 1945, 49th Leg., R. S., H. B. 642, *Buchanan v. Girvin*, 176 S. W. (2d) 729. Letter Opinion No. 2871, dated October 12, 1931.

The items listed as charged by you in an uncontested divorce case are in conformity with the provisions of Arts. 3927 and 3933, V. A. C. S.

0-6852 To: Vera V. Fogg, County Attorney, Hardeman County

Date: October 26, 1945

Even though H. B. 800, Acts 1945, 49th Leg., R. S., authorizes an increase in the school tax rate, if the commissioners' court and boards of any independent school districts involved have made their annual levies for the year and so certified them to the tax assessor-collector, no additional tax may be levied. If such a levy has not already been made for the year by said court and boards, however, they may make an original levy for the increased rate authorized by said statute, provided elections have been held authorizing such increase. Arts. 2784, 2784e, V. A. C. S.

0-6854 To: Railroad Commission of Texas

Date: October 3, 1945

This opinion concerns the form of indemnity bond for liquefied petroleum gas license under the provisions of Art. 6053, V. A. C. S. Acts 1945, 49th Leg., R. S., S. B. 269.

0-6855 To: W. K. McClain, District Attorney, Georgetown

Date: October 25, 1945

A city marshal would be authorized to serve a *capias pro fine* in a case in the justice court which was filed by him, provided the justice of the peace directs the *capias* to the city marshal. Arts. 36, 441, 453, 788, 793, 885, 918, 920, V. A. C. C. P.

0-6857 To: Abner L. Lewis, Member, State Board of Pardons and Paroles

Date: October 3, 1945

The porter acting as custodian of files for the Board of Pardons and Paroles can receive a maximum salary of \$864.00 per annum. Art. VIII, Sec. 6, Constitution of Texas; Acts 1945, 49th Leg., R. S., S. B. 317; Opinion 0-4222-A.

0-6859 To: Homer D. Eck, County Auditor, Fayette County

Date: October 13, 1945

A commissioners' court has the authority to lease, rent or hire trucks from a private individual for the benefit of the county. Said county may pay directly to individuals the cost of repairs, labor and gasoline on said trucks and deduct this amount from the rent due the owner of the truck. Arts. 2351, 6751, V. A. C. S.; *Lasater v. Lopez*, 202 S. W. 1039; *El Paso County v. Elam*, 106 S. W. (2d) 393.

0-6860 To: Ernest Guinn, County Attorney, El Paso County
Date: October 15, 1945

This opinion concerns tax assessment of shares of national bank stock. Arts. 5079, 5080, 7185, 7211, V. A. C. S.; Opinions 0-4675, 0-4869.

0-6862 To: Weaver H. Baker, Chairman, Board of Control
Date: October 29, 1945

A person cannot be committed legally to a State hospital for the insane for a period of more than ninety days without an adjudication by a duly qualified jury. Acts 1943, 48th Leg., R. S., H. B. 158, S. B. 109; Arts. 3193-3193b, 3193o-2, V. A. C. S.; 39 Tex. Jur., pp. 253, 254, 258, 259.

0-6863 To: John W. Crudgington, County Auditor, Potter County
Date: October 24, 1945

If the Commissioners' Court of Potter County has been authorized by a vote of the people, under Art. VIII, Sec. 9, Constitution of Texas, known as the re-allocation of county funds amendment, to increase the Permanent Improvement Fund levy from the constitutional amount of twenty-five cents to forty cents for a period of six years, at the expiration of which time another election will be necessary to extend said increase, the Attorney General is authorized to approve Permanent Improvement Bonds to mature within the six-year period up to an amount that would obligate all the forty-cent levy for the six years. However, the Attorney General is authorized to approve bonds maturing after the expiration of the six-year period in an amount which would obligate no more than the twenty-five cent levy originally provided by the Constitution, since the failure of the voters to re-adopt the increase at the end of the six years would cause the amount of the levy to revert to twenty-five cents. Art. VIII, Sec. 9, Constitution of Tex.; *City of Aransas Pass v. Keeling*, 247 S. W. 818, 821.

0-6865 To: Weaver Baker, Chairman, State Board of Control
Date: October 17, 1945

The proposed State Courts Building may not be located on the southwest corner of Eleventh Street and Congress Avenue, Austin, because H. B. 301, Acts 1945, 49th Leg., authorizing the construction of said building and appropriating money for same, provides that it shall be constructed on the southeast corner of said intersection, present site of the Walton Building.

0-6874 To: John Dawson, County Attorney, San Patricio
County
Date: October 25, 1945

Under the facts stated, the trustees of Gregory Independent School District are authorized to expend funds of the school district in laying a sewer line across land not belonging to the school, in order to effectively meet the necessary sanitation requirements of the school building. Acts 1921, 37th Leg., 1st C. S., H. B. 66; Art. 2780, V. A. C. S. (See opinion for citation of additional authorities.)

0-6877 To: H. C. Petry, Jr., County Attorney, Dimmit County
Date: October 25, 1945

In juvenile proceedings, a judgment for costs cannot be awarded against anyone; a jury may be demanded but the statutes do not provide for the payment of such jurors; neither do they provide for compensation to the county attorney in such cases, even though it is his duty to handle them. Arts. 2122, 2123, 2338-1, V. A. C. S.; 34 Tex. Jur., Secs. 105, 107; *In re Dendy, et al.*, 175 S. W. (2d) 297, affirmed by the Supreme Court in 179 S. W. (2d) 269; Opinions 0-5602, 0-5786, 0-6461.

0-6878 To: R. W. Calvert, County Attorney, Hill County
Date: October 29, 1945

A commissioners' court does not have the authority to lease a county-owned airport to an individual. It may, however, appoint a manager for such airport and determine the amount of compensation of such a manager for his services and whether such compensation shall be a salary or a commission. Arts. 689a-11, 1269h, 1709, V. A. C. S.; Opinion 0-3865. (See opinion for citation of additional authorities.)

0-6879 To: Leonard Carlton, Commissioner, Bureau of Labor
Statistics
Date: October 19, 1945

Any fees charged applicants by employment agencies before employment has been obtained and accepted by said applicants are contrary to the statutes. Nurses' organizations which are operated for a profit are subject to the statutes controlling employment agencies. Art. 5221-a-4, Secs. 1(e), 2, 11, V. A. C. S. (See opinion for citation of additional authorities.)

0-6881 To: L. W. Vance, County Attorney, Titus County
Date: October 19, 1945

Under the given facts, since two felony cases were filed against the same defendant for separate offenses growing out of different

criminal acts or transactions, the county attorney is entitled to a fee of five dollars in each case for attending and prosecuting such cases before an examining court. Arts. 1020, 1027, V. A. C. C. P.

0-6882 To: Charles H. Theobald, County Attorney, Galveston County

Date: October 26, 1945

A member of the Legislature is eligible to be appointed Assistant County Attorney of Galveston County after his resignation as a member of the 49th Legislature, provided the commissioners' court sets his salary at an amount not in excess of the maximum amount provided for in Art. 3902, Sec. 4, V. A. C. S. However, if said court increases the salary of said office under the provisions of H. B. 798, which was passed by the 49th Legislature of which the individual in question was a member, Art. III, Sec. 18 of the Constitution would render said individual ineligible for the office. Acts 1945, 49th Leg., R. S., H. B. 798, S. B. 123; Arts. 331, 3902, V. A. C. S.; Opinion 0-5893.

0-6883 To: Frank D. Quinn, Executive Director, State Parks Board

Date: October 31, 1945

Since the supplies in question were ordered and contracted for and intended for use during the biennium ending August 31, 1945, warrants should be issued against the appropriation for the Special Park Fund for the fiscal year ending August 31, 1945, even though the supplies were not delivered until after September 1, 1945. Acts 1945, 49th Leg., R. S., S. B. 317; Opinions 0-2631, 0-2830, and 0-6246.

0-6886 To: Mike Anglin, Criminal District Attorney, Longview

Date: October 29, 1945

Neither the Universal CIT Corporation nor its branch manager is subject to the provisions of subdivision 15, Art. 7047, R. C. S., which imposes county and state occupation taxes on money lenders, since the corporation, acting through its agent, is lending its own money. *Means v. State*, 75 S. W. (2d) 953.

0-6891 To: George H. Sheppard, Comptroller of Public Accounts

Date: October 31, 1945

The "eighteen months" during which a discharged serviceman is allowed to vote without payment of a poll tax means "eighteen calendar months." Arts. VI, Sec. 2a, Constitution of Texas; Art. 23, R. C. S.; Opinions 0-6821 and 0-6828.

0-6897 To: George H. Sheppard, Comptroller of Public Accounts

Date: October 29, 1945

The tax collector of Brewster County, in the absence of legislative authority to keep in a suspense account delinquent and current ad valorem taxes paid under protest, must remit said taxes when collected by him to the proper authorities under Arts. 7260 and 7261, R. C. S.; and by so doing, he will not incur any personal liability. Arts. 4388, 7057b, 7260, and 7261, V. A. C. S. (See opinion for citation of additional authorities.)

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