

MONTHLY REPORT  
OF THE  
**ATTORNEY GENERAL**  
OF THE  
**STATE OF TEXAS**



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**GERALD C. MANN**  
**ATTORNEY GENERAL**



**MONTHLY REPORT**  
**OF THE**  
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**OPINIONS RENDERED**  
**OCTOBER 1, 1942**  
**To**  
**OCTOBER 31, 1942**



**GERALD C. MANN**  
**ATTORNEY GENERAL**

**VOLUME 4, NUMBER 10**

**OCTOBER, 1942**

**PRESS OF VON BOECKMANN-JONES CO., AUSTIN, TEXAS**



0-3847 To: Olin Culberson, Member, Railroad Commission  
of Texas

Date: October 19, 1942

This opinion concerns the question of whether the Railroad Commission has authority to recognize the consolidation of leases made prior to June 5, 1941, and grant a tolerance allowable to said consolidated tract or whether it is precluded from doing so because of its order of June 5, 1941, forbidding the combination of leases in order to obtain a tolerance allowable. *Railroad Commission v. Earl Fain, et al.*, 161 S. W. (2d) 498; *Humble Oil & Refining Co. v. Railroad Commission*, 94 S. W. (2d) 1197; *Dailey v. Railroad Commission*, 133 S. W. (2d) 219; *F. A. Gillespie and Sons Co. v. Railroad Commission*, 161 S. W. (2d) 159.

0-4391-A To: John D. Reed, Commissioner, Bureau of Labor Statistics

Date: October 13, 1942

The Child Labor Law (Art. 1573, P. C.) prohibits the employment of children under 15 years of age in the types of labor specified therein regardless of the population of the city or town where such labor is to be performed except the provisions of this article prohibiting the employment of such children in messenger service is applicable only in cities and towns of more than 15,000 population. *Spears v. City of San Antonio*, 223 S. W. 166; Opinion 0-4391 overruled.

0-4587 To: O. P. Lockhart, Chairman, Board of Insurance Commissioners

Date: October 16, 1942

This opinion concerns questions relative to (1) the incorporation of title insurance companies under Art. 1302a, R. C. S., as amended, (2) the powers of the Board of Insurance Commissioners to prescribe rates and policy forms for title insurance risks outside of Texas, (3) the deposits and reserves required of title insurance companies, (4) the liability of these companies for franchise taxes, and fees for filing their charters, (5) the eligibility of property to be received by the companies in payment for capital stock and surplus. Arts. 132a, 1360, 1364, 3914, 3920, 4699, 4700, 4705, 4706, 4720, 4725, 4726, 4862a, 4989, 7064, R. C. S.; Opinion 0-4556. (See opinion for citation of additional authorities.)

0-4613 To: George H. Sheppard, Comptroller of Public  
Accounts

Date: October 20, 1942

If the United States Government was in fact the owner in fee simple of property as of January 1, 1942, the government and the property would be exempt from all ad valorem taxes for the year 1942 provided the United States held title to the property throughout the year 1942.

The fact that the Federal Government planned to convey, but did not actually convey, the property to Defense Plant Corporation at some date subsequent to January 1, 1942, would not change the rule. However, if the United States Government conveys the property to Defense Plant Corporation at any time during 1942, then such corporation will be liable for and may be assessed the prorata share of taxes for the portion of the year 1942 remaining.

Since Art. 7151, R. C. S., creates a liability on the part of the owner of property on the first day of January of any year for taxes levied upon such property for that year, the fact that the owner conveys the property to the United States Government after January first does not defeat his tax liability.

When the United States Government entered into exclusive possession of property in November, 1941, pursuant to an option agreement and accepted a deed to the property or secured a valid judgment in condemnation proceedings in February, 1942, the property is subject to taxation for the year 1942 by reason of the fact that the legal owner thereof on January 1, 1942, was an individual. Title 15 U. S. C. A., Sec. 610, as amended; 26 R. C. L. 299; 40 Tex. Juris. 24; 43 Tex. Juris. 98, 99; Opinions 0-4749, 0-4779. (See opinion for citation of additional authorities.)

0-4618 (Conference Opinion 3108)

To: Texas Unemployment Compensation Commission

Date: October 23, 1942

The due date rather than the date of payment of unemployment compensation taxes is the date to be considered as affecting the tolling of limitations under Art. 5221b-12 (j), V. A. C. S., which repeals Art. 5221b-12-(d). Therefore, when X company paid taxes to the commission at a time when the application for refund thereof was barred, the commission adopted the correct position in denying refund of such taxes. Opinions 0-459, 0-1765.

0-4715 To: Henry C. Kyle, County Attorney, Hays County  
Date: October 2, 1942

Since Sec. 1, Acts 1939, 46th Leg., Sp. Laws, p. 565, is unconstitutional and void as a local or special law, the payments of salaries made to County Commissioners of Hays County over and above the sum of \$1400.00 per year were illegally made, and each commissioner is personally liable to repay such excess salaries so paid to him. He is, in addition, liable for the excess salaries paid to the other commissioners if it can be shown that he acted maliciously, corruptly, or under circumstances imputing malice, corrupt motive or lack of good faith. The sureties on the bonds of the county commissioners are also liable for any and all sums for which the commissioners are personally liable.

The county auditor is liable for all excessive sums paid to the county commissioners insofar as he acted maliciously, corruptly, or negligently in permitting such payments to be made, and his sureties are liable for the repayment of any and all sums for which the county auditor is personally liable. Art. III, Sec. 56, Constitution of Texas; Arts. 1649, 1651, 1653, 1660, 1661, 2340, R. C. S. This opinion overrules in part Opinions 0-3351, 0-4431, and 0-4635. (See opinion for citation of additional authorities.)

0-4718 To: O. P. Lockhart, Chairman, Board of Insurance  
Commissioners  
Date: October 15, 1942

Under the facts submitted to this department the South Plains Cooperative Hospital Association of Amherst, Texas, is engaged in the business of writing insurance, but this corporation as it is now constituted and organized cannot come under the supervision of the Board of Insurance Commissioners. Arts. 1302, Subdivs. 2, 6, 4590, R. C. S.; Opinions 0-4092, 0-4480.

0-4742 To: J. E. McDonald, Commissioner, Department of  
Agriculture  
Date: October 14, 1942

The Commissioner of Agriculture has the authority to make contributions toward the support of The Southern Commissioners of Agriculture Association from the contingent fund appropriated to the Department of Agriculture. Acts 1941, 47th Leg., R. S., S. B. 423; Art. 5, R. C. S.

0-4744 To: O. P. Lockhart, Chairman, Board of Insurance  
Commissioners  
Date: October 3, 1942

While the laws of Texas authorize the writing of fire, marine, and hail insurance, there is no specific provision as to how a foreign marine insurance company or a foreign hail insurance company may secure a certificate of authority to write such insurance in Texas. However, when the Board of Insurance Commissioners is satisfied that such insurance carriers have in all respects fully complied with the law as provided by Art. 4686, R. C. S., such certificates shall be granted. The fact that the companies outside of Texas write fire insurance, as well as hail and marine insurance respectively, would not prevent the issuance of the certificates when the guaranty bond or security deposits required by Arts. 4925 and 4926, R. C. S., have been made. Arts. 1529, 4682, 4751, 4755, 4756, 4757, 4761, 4876, 4880, 4891, 4902, 4903, 4904, 4905, 4905A, 4989, 5034, 5038, 5059, 5061, R. C. S. (See opinion for citation of additional authorities.)

0-4745 To: George H. Sheppard, Comptroller of Public  
Accounts  
Date: October 20, 1942

Where a tax collector accepts an individual's check which is returned unpaid in payment for the motor vehicle sales tax and issues to the taxpayer a receipt therefor, this officer has no authority to void the receipt and refuse to report the tax payment to the Comptroller's Department, but the tax collector and his bondsmen are liable for the amount of the tax because the tax collector had no authority to accept a check as payment for the tax. Art. 7074k, R. C. S.; *Seisson v. State*, 51 S. W. (2d) 703; *Miller v. State*, 53 S. W. (2d) 790; *Austin v. Fox*, 1 S. W. (2d) 601; *Orange County v. T. & N. O. Ry. Co.*, 80 S. W. 670; Opinion 0-2889.

0-4749 To: J. M. Preston, County Attorney, Childress  
County  
Date: October 16, 1942

When property is acquired by the Federal government in March, taxes thereon should be assessed against the private owner thereof as of the preceding January 1, and such owner is personally liable for State, county, and school taxes. The specific lien upon the property is unenforceable so long as it is owned by the Federal government in the absence of consent by the Federal government to the foreclosure of the tax lien. Art. VIII, Secs. 2, 15, Constitution of Texas; Arts. 1043, 1060a, 2758, 2791, 2792, 2795, 7151, 7152, 7172, 7205, 7272, 7326, 7328, R. C. S. (See opinion for citation of additional authorities.)



0-4760 To: John D. Reed, Commissioner, Bureau of Labor  
Statistics

Date: October 2, 1942

The Federal Railway Labor Act does not impair the validity of the Texas Women's Labor Law, and this Texas act is valid and enforceable insofar as it may affect the hours of service of women employed by railroads engaged in interstate commerce with the exception of those women who in isolated instances may be "actually engaged in or connected with the movement of any train." Arts. 1569-1572, inc., P. C.; 45 U. S. C. A., Secs. 51, 62, 151-163, inc.; *Erie Railroad v. New York*, 233 U. S. 671; *Virginia Ry. Co. v. System Federation No. 40*, 300 U. S. 515; *Missouri Pac. R. Co. v. Norwood*, 42 F. (2) 765. (See opinion for citation of additional authorities.)

0-4826 To: George H. Sheppard, Comptroller of Public  
Accounts

Date: October 27, 1942

The sheriff tax assessor-collector is without statutory authority to deduct the costs of a survey of the land sold from the proceeds of a tax sale. Arts. 7319-7345, R. C. S. (See opinion for citation of additional authorities.)

0-4827 To: H. Pat Edwards, Civil District Attorney, Dal-  
las, County

Date: October 1, 1942

The traveling expenses incurred by a county judge in attending the National Civilian Defense Convention which was held out of state cannot be paid by the county.

Art. 3912e(1), R. C. S. authorizes the payment of the traveling expenses of a county judge incurred on "official county business", but this article does not authorize the payment of traveling expenses of county commissioners where such officers' salaries are paid from the road and bridge fund of the county.

That provision of the Dallas County Special Road Law (Acts 1941, 47th Leg., R. S., chap. 458, p. 729) providing for the payment of the traveling expense of the county judge, county auditor, and county commissioners incurred on county business generally is unconstitutional and therefore void. (See opinion for citation of authorities.)

0-4830 To: L. L. Geren, County Attorney, Limestone  
County  
Date: October 29, 1942

The county budget cannot be amended to include obligations incurred prior to the adoption of said amendment. The county budget can only be amended where the existence of an emergency is established or at least debatable. Opinions 0-1022, 0-1053.

Assuming that interest can be legally paid on scrip, the county auditor must include such interest in computing legal expenditures under the budget provided claims for such interest are duly registered as required by Arts. 1626 and 1627, R. C. S.

The commissioners' court can incur obligations in excess of anticipated receipts where a debt has been created and provisions for payment of same have been made in compliance with the constitutional provision requiring that special provision be made for paying the obligation. However, obligations cannot be made where it appears that the parties intended that payment should be made from current funds and said obligation or obligations exceed the anticipated receipts of current funds. (See opinion for citation of authorities.)

0-4838 To: O. P. Lockhart, Chairman, Board of Insurance  
Commissioners  
Date: October 24, 1942

The Board of Insurance Commissioners is not authorized to accept the statutory deposit or the trustee surplus maintained in and as defined by the State of New York by United States branches of alien companies doing business in Texas as its "paid up capital stock" within the provisions of Art. 4932, R. C. S., as same limits any one single risk to which the character of companies named therein may be exposed. Arts. 4686, 4919, 4993, R. C. S. (See opinion for citation of additional authorities.)

0-4845 To: E. F. Mitchell, County Attorney, Callahan  
County  
Date: October 9, 1942

Where a superintendent is employed under Art. 2781, R. C. S., by the board of trustees of an independent school district under a contract for a period of 12 months and such superintendent, through no fault or action on the part of the board of trustees, leaves at the end of the eleventh month and does not perform any services during the twelfth month of the contract, the school district is not liable to the superintendent for his salary for the twelfth month. 56 C. J. 396, 411.

0-4847 To: George H. Sheppard, Comptroller of Public  
Accounts  
Date: October 19, 1942

The tax levied by Art. 7047, Sec. 41a, R. C. S., does not accrue on cement purchased by a Texas municipality from an out-of-state manufacturer. Art. VIII, Sec. 1, Constitution of Texas; *State v. City of El Paso*, 143 S. W. (2d) 366.

0-4849-A To: H. B. Virgil Crawford, County Attorney,  
Terry County  
Date: October 9, 1942

This opinion reconsiders and affirms Opinion No. 0-4849 concerning the right of Terry County to hold an election under the Stock Election Law. Opinion 0-2189.

0-4852 To: Fred Erisman, Criminal District Attorney,  
Gregg County  
Date: October 13, 1942

Sec. 62 of Art. 3883, R. C. S., as amended by the 44th Legislature, providing that the maximum salaries for justices of the peace and constables in counties having a population of less than 30,000 and over \$90,000,000 tax valuation to be \$3,600 per annum was repealed by Art. 3891, R. C. S. as amended by the same Legislature.

On August 24, 1935, Articles 3891 and 3883, R. C. S. were effective and applied to Gregg County, which at that time had a population of less than 25,000; therefore the maximum amount of salary that precinct officers can be paid is \$1,400 per annum and the fact that the population of Gregg County has since this time increased to over 58,000 will have no effect on this question, but if the precinct officers are placed on a fee basis the 1940 Federal Census will be applicable and these officers may under Section 3, Article 3883, R. C. S., retain their fees up to \$1,800 per annum or under Art. 3891, R. C. S., retain their fees up to \$2,200. Art. 3912e, Sec. 13, R. C. S.; 39 Tex. Jur. 150; Opinions 0-2560, 0-2582.

0-4854 To: W. A. Davis, State Registrar, Texas State  
Board of Health  
Date: October 15, 1942

Where an original birth certificate which contained an error has been recorded, such certificate cannot be removed or destroyed but may only be amended to correct the error; there-

fore, under the facts submitted the delayed certificate of birth together with the order of the county judge should be recorded as an amendment to the original certificate. Art. 4477, Rule 51a, R. C. S.; *Couch v. Southern Methodist University*, 290 S. W. 256; *Livermore v. Waite*, 36 P. 424; *Ex Parte Woo Jan*, 288 F. 927.

0-4855-A To: L. A Woods, State Superintendent of Public Instruction  
Date: October 7, 1942

Transportation aid cannot be paid for a pupil who was enrolled in District C prior to the time that the entire scholastic enrollment of District A, his home district, was transferred to District B. Art. 2696, R. C. S.; Acts 1941, 47th Leg., R. S., H. B. 284, Art. V, Sec. 2, Art. VIII, Secs. 1, 2; Opinions 0-4678, 0-4855.

0-4856 To: Homer Garrison, Jr., Director, Department of Public Safety  
Date: October 1, 1942

Peace officers of this State are authorized under Sec. 49, Art. 1436-1, P. C., to take possession of any motor vehicle on which there are tires whose serial numbers have been obliterated or removed for a sufficient length of time to establish identity and to determine ownership of the automobile or the tires, and any person who shall have in his possession a motor vehicle on which there are tires whose serial numbers have been obliterated or removed is subject to prosecution for having committed a misdemeanor; however, the above cited article does not give peace officers authority to take possession of tires whose serial numbers have been obliterated or removed when such tires are not attached to an automobile.

0-4857 To: H. M. Hooper, County Attorney, Yoakum County  
Date: October 31, 1942

The strip of land along the south boundary line of Yoakum County which has been included in the Seminole Common School District of Gaines County is now within the common school area of Yoakum County. *Gaines County v. Yoakum and Terry Counties*, 163 S. W. (2d) 393.

School taxes that have been collected in such area and paid over to Seminole Common School District were not illegally collected and paid since the school authorities were acting under color of law.

The School Boards of the Counties of Yoakum and Gaines can establish a county line common school district to include such area by proceeding in accordance with Art. 2743, R. C. S.

0-4861 To: William J. Tucker, Executive Secretary, Game,  
Fish and Oyster Commission  
Date: October 29, 1942

A retail fish dealer who sends out licensed wholesale trucks with drivers who take wholesale orders and make deliveries from such trucks in filling orders is not required to procure a wholesale fish dealer's license; but, when the wholesale truck drivers take wholesale orders for aquatic products and ship the order to the customer from the retail store, the retail fish dealer is required to purchase a wholesale fish dealer's license. Arts. 7, 934a, P. C. (See opinion for citation of additional authorities.)

0-4862 To: C. H. Cavness, State Auditor and Efficiency  
Expert  
Date: October 9, 1942

This opinion concerns the qualifying acts required of State, district, and county officers before they may exercise official functions and receive compensation therefor. Art. IV, Sec. 20, Art. XVI, Secs. 1, 17, Constitution of Texas; Arts. 16, 1706, 1928, 1937, 2340, 3882, 6887, R. C. S.; *State v. Jordan*, 28 S. W. (2d) 921; *Robinson v. State*, 28 S. W. 567; *Gohehour v. Anderson*, 81 S. W. 104; *Flatan v. State*, 56 Tex. 93; *State v. Box*, 78 S. W. 982.

0-4867 To: J. D. Looney, County Auditor, Bowie County  
Date: October 6, 1942

Where a deed has been recorded in the office of the county clerk previous to the term of office of the incumbent county clerk without any notation that the seal of the notary public was affixed to the deed, the present county clerk has no authority to correct the record by showing that the seal did in fact appear on said deed; and further, the deed would be effective without having the records corrected if such deed has been on record for ten years or longer and there would be no need to record the deed, but if the parties interested in the deed should desire to have the deed again recorded they must pay the fees required therefor. Arts. 3726, 3726b, R. C. S.; *Alexander v. Haughten*, 26 S. W. 1102; 1 Tex. Jur., Sec. 78, pp. 486-7; 36 Tex. Jur., Sec. 10, p. 407.

0-4873 To: James W. Strawn, County Attorney, Willacy  
County  
Date: October 14, 1942

A private in the United States Army may be a candidate for election to the office of county tax assessor-collector and, if elected, he may take and hold the office and the compensation attached thereto. Opinion 0-3448.

0-4874 To: William J. Lawson, Secretary of State  
Date: October 7, 1942

Insofar as Pub. L. No. 712, 77th Congress, (Sept. 16, 1942) imposes duties upon the Texas Secretary of State with respect to providing a method of voting in time of war by members of the land and naval forces of the United States absent from the place of their residence and providing the method by which such persons may be furnished ballots for voting on elections for United States Senators and Representatives, it is valid and is the supreme law of the land. The method by which the Secretary of State executes his duties under such law is within his administrative discretion, the expenses thereof being defrayed wholly from the Federal appropriation made pursuant to Sec. 10 of such law. Art. I, Secs. 2, 4, 18, 17th Amendment, Constitution of United States; Art. VI, Secs. 1, 2, Constitution of Texas; *Carpenter v. Sheppard*, 135 Tex. 413, 145 S. W. (2d) 562.

0-4876 To: C. J. Wilde, County Auditor, Nueces County  
Date: October 14, 1942

When Defense Plant Corporation leases 24 buses to Nueces Transportation Company, a defense plant project, conditioned on the necessity of transporting war workers, the transaction constitutes a lease rather than a sale. Therefore, the buses are exempt from the one per cent retail sales tax levied by H. B. 8, Art. VI, Acts 1941, 47th Leg., R. S., (Art. 7047k, R. C. S.); and, since the buses are the means and instrumentalities by which the federal purpose is to be carried out, they are exempt from ad valorem taxes. Art. 6677a, Secs. 3, 32a, R. C. S.; 15 U. S. C. A., Sec. 610; 47 Tex. Juris. 98. (See opinion for citation of additional authorities.)

0-4879 To: Ralph Brock, County Attorney, Lubbock County  
Date: October 5, 1942

An insurance company which operates as an old line legal reserve stock company is eligible to write insurance on the properties of an independent school district. *Lewis v. Independent School District of the City of Austin, et al.*, 161 S. W. (2d) 450.

0-4880 To: Ralph Brock, County Attorney, Lubbock County  
Date: October 5, 1942

A Lloyc's insurance company is eligible to write insurance upon the properties of independent school districts. *Lewis v. Independent School District of City of Austin, et al.*, 161 S. W. (2d) 450.

0-4881 To: Dewey S. Walker, County Attorney, Walker  
County  
Date: October 20, 1942

Since it is lawful for post exchanges, situated within the confines of a United States Military Post over which the United States Government has acquired jurisdiction, to sell 3.2 beer, or beer of less alcoholic content, we think such beer may be legally transported from any place within the State where the same may be legally manufactured, sold, or distributed to a post exchange, even though the route over which same is transported may traverse dry territory, provided the provisions of Art. 667, Sec. 25, P. C., are strictly complied with. Opinion 0-4438.

0-4882 To: Charles F. Hemphill, County Auditor, Upton  
County  
Date: October 7, 1942

The county auditor in auditing a monthly report of traveling expenses allowed the county attorney under Art. 3899 (b), R. C. S. is required to disapprove any item which he has reasonable grounds to believe was incurred in traveling by automobile between the court house and said officer's home. Opinions 0-332, 0-3670.

0-4883 To: C. J. Wilde, County Auditor, Nueces County  
Date: October 9, 1942

Sec. 4-A of Art. 3902, R. C. S., which provides that in counties having a population of 60,001 and not more than 100,000 inhabitants and containing a city of not less than 52,000 inhabitants the commissioners' court may allow an additional sum of \$200 per annum to heads of departments and their first assistants or chief deputies if such officers have served the county or a political subdivision thereof for not less than 2 continuous years, is unconstitutional and therefore void. Art. 3902, Secs. 4, 5, 3912e, Sec. 13, R. C. S.; *Miller et al., v. El Paso County*, 150 S. W. (2d) 1000.

0-4884 To: Charles F. Hemphill, County Auditor, Upton  
County  
Date: October 9, 1942

If a county auditor in auditing the accounts of the various county officers finds that such officers are indebted to the county and/or officer's salary fund or funds, it is his duty to refuse to approve the salary warrants of said county officers until such are paid. Arts. 3912e, Sec. 7, 4399, R. C. S.; *Sherman, et al. v. Hatcher*, 299 S. W. 227.

0-4886 To: Charles F. Hemphill, County Auditor, Upton  
County  
Date: October 5, 1942

S. B. 213, Acts 1941, 47th Leg., R. S., which provides for allowances for traveling expenses, not to exceed \$100 per month to county commissioners of counties having an assessed valuation of not less than \$20,000,000 and a population of not more than three persons per square mile, is unconstitutional and void. Art. III, Sec. 56, Art. VIII, Sec. 9, Constitution of Texas; Art. 2350, R. C. S.; *Miller v. El Paso County*, 150 S. W. (2d) 1000; *Jameson, et al., v. Smith*, 161 S. W. (2d) 520.

0-4887 To: George H. Sheppard, Comptroller of Public  
Accounts  
Date: October 15, 1942

An artificial gas distributor whose office and storage rooms are located outside of the corporate limits but who sells and makes deliveries of such gas to customers within the corporate limits of a town of more than 1,000 inhabitants is not subject to the gross receipts tax levied by Art. 7060, R. C. S. *Utilities Natural Gas Co. v. State*, 128 S. W. (2d) 1153; 38 C. J. 132; Opinion 0-3776.

0-4889 To: John Q. McAdams, Commissioner, Department  
of Banking  
Date: October 5, 1942

Subsec. 9 of Art. 2802f-1, R. C. S., which provides that the notes of certificates of indebtedness issued by a school district in anticipation of the collection of delinquent taxes shall be eligible for deposit by State depositories to secure the repayment of State funds, is unconstitutional and therefore void because the title to this act does not contain this subject. Art. III, Sec. 35, Constitution of Texas; Art. 2529, R. C. S.; Acts 1939, 46th Leg., R. S., S. B. 419.



0-4895 To: Frank X. Vance, County Attorney, Medina  
County  
Date: October 14, 1942

The appointment of a deputy by the county treasurer under Art. 3902, R. C. S., who is related to a county commissioner within the prohibited degree provided in Art. 432, P. C., is not a violation of said Art. 432, *supra*, for the commissioners' court merely authorizes the county treasurer to appoint a deputy and does not exercise any control over the person to be selected for the place either by appointing such person or by confirming his appointment. Opinions 0-1954, 0-4330, 0-4454, 0-4720.

0-4896 To: George H. Sheppard, Comptroller of Public  
Accounts  
Date: October 20, 1942

The statutes do not provide for the office of "Special District Judge" where the office of "District Judge" is vacant; therefore, the election of the special district judge in question after the district judge had been appointed and commissioned as a Major in the Army of the United States was void and the person so elected is entitled to no compensation for the services he rendered as special district judge. Art. V, Sec. 28, Art. XVI, Sec. 12, Constitution of Texas; Art. 6828, R. C. S.; *State v. DeGress*, 53 Tex. 387; *Ex Parte Dailey*, 246 S. W. 91; *Lowe v. State*, 201 S. W. 986; Opinion 0-1784. (See opinion for citation of additional authorities.)

0-4897 To: John R. Shook, Criminal District Attorney  
Date: October 13, 1942

This opinion concerns (1) whether it is the duty of the county clerk to mail to an elector who intends to be absent on election day and who has mailed to the clerk his application together with the statutory fee and within the prescribed time an absentee ballot, (2) the day on which the absentee voting may be begun and the day on which it ends, and (3) determination of the time when absentee ballots must be in the hands of the county clerk in order to be counted in the election. Art. 2956, Subdivs. 2, 3, 4, 5, 6; R. C. S.; Opinion 0-4455.

0-4898 To: Bert Ford, Administrator, Texas Liquor Con-  
trol Board  
Date: October 14, 1942

The judgment ordering the sale of a vehicle in which illicit beverages were being transported and which was seized is not a necessary part of a judgment of conviction of the defendant,

and the judgment ordering the sale of the seized vehicle upon the conviction of the defendant may be entered at any time during the term in which the defendant is convicted or at any term of court if the vehicle remains in the possession of the court or the seizing officers, "unless good cause to the contrary is shown by the owner." Art. 666-44, P. C.; Arts. 766, 783, 784, C. C. P.

0-4900 To: George H. Sheppard, Comptroller of Public Accounts

Date: October 31, 1942

This opinion concerns the appropriation of filing fees received under Secs. 2 and 4 of the Chain Store Tax Law, Art. 1111 d, P. C., to the Comptroller of Public Accounts for the administration of such law, and the disposition of "balances on hand" under S. B. 423, Acts 1941, 47th Leg., R. S.

0-4901 To: B. F. McKee, County Auditor, Hidalgo County

Date: October 24, 1942

The county clerk's certificate on recording an instrument as provided in Art. 6596, R. C. S., is not considered a part of such instrument, requiring it to be recorded where the instrument otherwise authorized to be recorded is deposited for record in another county. Arts. 6591, 6594, 6595, R. C. S.

0-4902 To: Clifford B. Jones, President, Texas Technological College

Date: October 13, 1942

This opinion concerns the question of whether a State owned college may employ a part-time music instructor who will be at the same time employed by a school district on a part-time basis. Art. XVI, Secs. 33, 40, Constitution of Texas; *Martin v. Fisher*, 291 P. 276; *Leymel v. Johnson*, 288 P. 859; 56 C. J. 382; 37 Tex. Jur. 1035; Opinions 0-371, 0-1422, 0-2528, 0-2607, 0-4628, 0-4669.

0-4904 To: C. H. Cavness, State Auditor and Efficiency Expert

Date: October 29, 1942

Sec. 24, Art. IV, Constitution of Texas, requiring officers and managers of "state institutions" to keep account of and report to the Governor semi-annually all moneys and choses in action received, disbursed, and disposed of by them, applies to state boards, commissions, departments, and authorities.

0-4905 To: B. N. Carter, County Attorney, Mitchell County  
Date: October 14, 1942

This opinion concerns the question of whether the county judge or the Secretary of State is the proper officer to certify the names of the candidates to be placed on the official ballot for a special election called to fill a vacancy in the State Senate, and the procedure to be followed by candidates for this office in order to have their names placed on the ballot. Arts. 2937, 2946-2950, inc., 2953a, 3165, R. C. S.

0-4906 To: Clyde Barton, County Auditor, Winkler County  
Date: October 15, 1942

The commissioners' court cannot invest in United States War Bonds money from the county's lateral road fund which constitutes the money allocated to the county from the lateral road account. Arts. 6674q-1, 6674q-7, 6674q-8(c), R. C. S.

0-4908 To: T. O. Walton, President, Agricultural and Mechanical College of Texas  
Date: October 17, 1942

Employees of A. & M. College serving as teachers of the main college, members of the Agricultural Research or Agricultural Extension Service staffs, or skilled laborers of the college can legally serve as city commissioners of the City of Bryan but they cannot receive any compensation from the State while so serving in this capacity. Art. XVI, Secs. 33, 40, Constitution of Texas; Opinions 0-371, 0-2601, 0-4562.

0-4911 To: John D. Reed, Commissioner, Bureau of Labor Statistics  
Date: October 15, 1942

Female employees of the United States Post Office do not come within the provisions of Arts. 1569-1572, P. C. 39 U. S. C. A., Secs. 117, 613, 629; *Erie Railroad v. New York*, 233 U. S. 671.

0-4912 To: John Q. McAdams, Commissioner, Department of Banking  
Date: October 17, 1942

A banking corporation organized under Title 16, R. C. S., having only trust and discount powers would not be entitled to a charter until all of the authorized capital stock had been subscribed and paid in full in cash. Art. XVI, Sec. 16, Constitution of Texas; Arts. 376, 377, 1302, Subdiv. 48, R. C. S.; *Kaliski v. Gossett*, *Banking Commissioner*, 109 S. W. (2d) 340.

0-4913 To: Roy A. Jones, County Attorney, Cottle County  
Date: October 14, 1942

A candidate for a State office cannot have his name placed upon the ballot for the general election if such candidate has failed to file with the Secretary of State an affidavit of loyalty as required by Art. 2978a, R. C. S.

0-4914 To: Luther C. Johnson, County Attorney, Anderson County  
Date: October 14, 1942

Where the nominee selected at the primary election declines the nomination prior to the general election, the executive committee of the party may select a nominee if there is a majority of the members of the committee present in meeting to constitute a quorum and a majority of those present vote in favor of the nominee. Arts. 3118, 3165, R. C. S.; *Walker, et al. v. Hopping*, 226 S. W. 146; 26 Words and Phrases, 103.

0-4915 To: L. A. Woods, State Superintendent of Public Instruction  
Date: October 19, 1942

The approval of the State Superintendent of Public Instruction is required on all transfers of scholastics made under Sec. 2, Art. VIII, H. B. 284, Acts 1941, 47th Leg., R. S., whether the transfer is on agreement of the trustees or on petition of the qualified voters. *McCorkel, County Superintendent v. District Trustees of Robinson Springs School Dist. No. 76 of Comanche County, et al.*, 121 S. W. (2d) 1048.

0-4916 To: Olan R. Van Zandt, Chairman, Joint Legislative Advisory Committee  
Date: October 22, 1942

Where a sending district transfers scholastics to a receiving district and the census rolls are combined under Sec. 2, Art. VIII, of the Rural Aid Law, Acts 1941, 47th Leg., R. S., ch. 549, H. B. 284, p. 880, transportation aid may not be granted for a pupil on such rolls who attends a grade in a school district other than the receiving district under the transfer agreement if such grade is taught in the receiving district. Arts. 2696, 2816, R. C. S.; Opinions 0-4524, 0-4855.

0-4917 To: William J. Lawson, Secretary of State  
Date: October 27, 1942

The amendment of the charter of Dallas Railway and Terminal Company reducing its capital stock need not be submitted to the Attorney General since such corporation is not a railroad corporation, but was incorporated under subdiv. 21, Art. 1121, R. C. S., 1911, now subdiv. 67, Art. 1302. The Secretary of State is authorized to collect a filing fee for such amendment of two hundred dollars.

0-4918 To: John A. Hamilton, District Attorney, Matador  
Date: October 27, 1942

The board of trustees of an independent school district which assesses and collects its own taxes may fix dates when school taxes will become due and delinquent different from those fixed for general taxes and may allow the discounts for early payment set forth in S. B. 402, Acts 1939, 46th Leg., R. S., provided the board of trustees has adopted the provisions of Sec. 1 thereof. Arts. 1033, 1041, 1058, 1063, 2750, 2758, 2779, 2780, 2784, 2791, 7057d, 7255, 7255b, R. C. S.; *Mission Independent School District v. Armstrong*, 222 S. W. 201; *McColoum v. City of Richardson*, 121 S. W. (2d) 423, 30 Tex. Juris. 490.

0-4919 To: B. T. Walters, County Auditor, Smith County  
Date: October 20, 1942

The commissioners' court has no authority to appropriate county funds to pay election judges in common school districts or independent school districts for expenses of any election held in such district or districts. Arts. 2746, 2746a, 2746b, 2806, R. C. S.

0-4920 To: C. H. Cavness, State Auditor and Efficiency  
Expert  
Date: October 29, 1942

This opinion concerns the right of office of the present Board of Directors of Webb County Conservation and Reclamation District, the need for confirmation of the appointment of the members by the Senate, the right of the secretary, treasurer, and general manager to compensation, the filling of vacancies on the board, and the terms of office of members. Art. IV, Secs. 12, 20; Art. XVI, Secs. 17, 30a, Constitution of Texas; Acts 1939, 46th Leg., R. S., S. B. 329; Art. 3040, R. C. S.; Opinions 0-410, 0-3348, 0-4864. (See opinion for citation of additional authorities.)

0-4922 To: L. A. Woods, State Superintendent of Public  
Instruction  
Date: October 20, 1942

The Board of Control should cancel or release the requisition of the Department of Education which has become a tentative charge against its appropriation where the contemplated purchase cannot be consummated by delivery because of Government regulations and conditions brought about by the war. Opinion 0-3708.

0-4923 To: L. A. Woods, State Superintendent of Public  
Instruction  
Date: October 22, 1942

Traveling expenses of a state employee in Amarillo summoned to a staff meeting in Austin incurred in an overnight stop in Dallas may not be legally paid since expenses incurred outside the reasonable line of travel are not incurred while traveling on State business.

0-4924 To: E. L. Hinson, Jr., County Auditor, Polk County  
Date: October 24, 1942

For their service in trying and finally disposing of criminal cases, the justices of the peace and county judges are entitled to full fees from the county under Art. 1052, V. A. C. C. P., irrespective of the collection or satisfaction of the judgment they render.

County attorneys, constables, sheriffs, and clerks having costs in a misdemeanor case are not entitled to one-half fees under Art. 1055, V. A. C. C. P., prior to satisfaction of the judgment by jail service, county farm service, road work service, or other legal service on other county projects contemplated by such article. If the judgment is satisfied in part only by such jail or other service, the officers would be entitled to half costs on the portion of the judgment which is satisfied.

The judgment of conviction in a misdemeanor case will authorize the sheriff to proceed in accordance with the statutory methods of collection of the fine and costs, and no further orders from the justice of the peace are necessary. In placing prisoners on the county farm, the sheriff is limited by rules and regulations prescribed by the commissioners' court.

Arts. 783, 787, 788, 789, 793, 794, 795, 797, 920, 1065, 1074, V. A. C. C. P.; Opinions 0-441, 0-469, 0-616, 0-755, 0-1015, 0-1578, 0-1792. (See opinion for citation of additional authorities.)

0-4925 To: Dan W. Jackson, Civil District Attorney, Harris  
County  
Date: October 20, 1942

Where guardianship proceedings are removed from one to another county the county clerk of the county to which such proceedings are removed is required to charge a filing fee for each of the original papers of the proceedings which are filed in this new county. Arts. 3930, 4290, 4295a, R. C. S.

0-4926 To: Ralph Logan, County Attorney, Tom Green  
County  
Date: October 26, 1942

The Commissioners Court of Tom Green County is not authorized to expend county funds to establish a blood plasma bank in connection with the program of the Office of Civilian Defense. Opinion 0-4529. (See opinion for citation of additional authorities.)

0-4927 To: C. H. Cavness, State Auditor and Efficiency  
Expert  
Date: October 27, 1942

Although Sec. 8, Art. 4364, R. C. S., imposes a duty upon the heads of all state departments, institutions, boards, commissions, and other officials to keep accounts of expenditures from their appropriations and to balance such accounts monthly against like accounts kept by the Comptroller of Public Accounts, such statute does not prescribe a penalty for noncompliance. Therefore, the Comptroller is not authorized to refuse to issue warrants against funds appropriated for state agencies that have not complied therewith; however, any administrative officer of the state may call such default to the attention of the Attorney General for investigation and action according to his official judgment.

0-4928 To: A. H. Dunlap, Member, Board of Water En-  
gineers  
Date: October 24, 1942

Although the limitations of five cents per mile for the use of private automobiles contained in Art. 6823, R. C. S., apply, the limitations contained in the General Departmental Appropriation Bill, Acts 1941, 47th Leg., R. S., S. B. 423, do not apply to traveling expenses incurred by the Pecos River Compact Commissioner and payable out of the special appropriation made by H. B. 739, Acts 1941, 47th Leg., R. S., ch. 632.

0-4929 To: Wayne Lefevre, County Auditor, Clay County  
Date: October 29, 1942

A peace officer does not have the right without a legal warrant of arrest to arrest and search a person possessing liquor for the purpose of sale in a dry territory. Arts. 212-217, C. C. P.; Arts. 666-20, 666-44, P. C.; *Agnollo v. United States*, 269 U. S. 20.

0-4932 To: T. M. Trimble, First Assistant State Superintendent of Public Instruction  
Date: October 29, 1942

The county board of school trustees, when duly petitioned to detach territory from either a common or independent school district and annex the same to a contiguous district, is vested with discretion to determine whether the transfer shall be made. Arts. 2442f, Sec. 1; 2742e, Sec. 2, R. C. S. (See opinion for citation of additional authorities.)

0-4936 To: O. P. Lockhart, Chairman, Board of Insurance Commissioners  
Date: October 30, 1942

Radio broadcasting stations advertising policies of insurance offered to the public by insurance companies under the facts set forth are not soliciting insurance in violation of Arts. 5055, 5056, R. C. S., and Arts. 568-570, 570a, P. C. (See opinion for citation of additional authorities.)

0-4940 To: William J. Lawson, Secretary of State  
Date: October 29, 1942

The Secretary of State does not have authority to remove a notary public from office or to cancel the commission previously issued to him. Art. IV, Sec. 26, Constitution of Texas; Arts. 5949, 5988, 6253-6257, R. C. S.

0-4941 To: E. L. Shelton, County Auditor, Johnson County  
Date: October 31, 1942

The five cents per line allowable under Art. 7336f, R. C. S., for compiling a delinquent tax roll is not a fee of office of the tax assessor-collector, but is only to reimburse him for actual expenses of compilation. If the tax assessor-collector lacks sufficient help to do the extra work, he may employ additional workers and pay his actual expenses proportionately from the various tax collections limited by the five cents per line of the tax roll. Opinion 0-4644.



0-4944 To: I. L. Chandler, County Auditor, Montague County  
Date: October 27, 1942

Sheriffs and constables are entitled to a fee of two dollars for each legal arrest made in misdemeanor cases. Art. 1065, C. C. P.; Opinion 0-1160.

0-4945 To: R. L. Elliott, County Attorney, Stephens County  
Date: October 27, 1942

The district judge, acting alone and without the recommendation of the commissioners' court, has the power to discontinue the services of a county auditor appointed in the manner provided in Art. 1646, R. C. S. Arts. 1645, 1647, R. C. S.; *Weaver v. Commissioners' Court of Nacogdoches County*, 146 S. W. (2d) 170.

0-4949 To: J. S. Murchison, Executive Director, State Department of Public Welfare  
Date: October 30, 1942

When a guardian for an incompetent person is appointed pursuant to S. B. 125, Acts 1941, 47th Leg., R. S., to receive funds from the State and/or Federal Government, a general guardianship is created and the liability of the guardian and his bondsmen extends not only to moneys received from the State and/or Federal Government but likewise to any other money, funds, or property whatsoever owned by the ward. The court may act upon application of the Executive Director of the State Department of Public Welfare who is interested therein since the ward is a recipient of old age assistance.

0-4951 To: E. H. Griffin, County Attorney, Young County  
Date: October 29, 1942

Rule 75, Texas Rules of Civil Procedure, forbids the withdrawal of filed papers from the district clerk's office or custody except upon the court's order entered upon the minutes allowing such withdrawal on leaving a certified copy on file, and the court is not authorized to permit such removal unless such certified copy is left on file.



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