

MONTHLY REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF TEXAS



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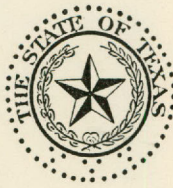
MONTHLY REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF TEXAS

OPINIONS RENDERED

September 1, 1941

To

September 30, 1941



GERALD C. MANN
ATTORNEY GENERAL

VOLUME 3, NUMBER 9

SEPTEMBER, 1941

0-1578-A To: Charles R. Martin, County Auditor, Harrison County
Date: September 14, 1941

A constable operating on the fee system is entitled under Art. 1055, C. C. P., to half costs from the county on that part of the time a defendant remains in jail or works for the county when he so discharges part of his fine and costs and pays off the balance of his fine and costs. Therefore, under the facts presented to this department wherein a prisoner was released by order of the county judge and county health officer after two days' jail service, the constable is entitled to receive his half costs since said officers do not have pardoning power and such release from jail does not release the prisoner from the payment of the balance of his fines and costs. Opinion 0-1578.

0-3082 To: George H. Sheppard, Comptroller of Public Accounts
Date: September 23, 1941

The fees collected by the examiners of credit unions appointed by the Banking Commissioner shall be retained to compensate them and to defray their expenses. Any fees collected in excess of the limit of compensation and expenses of such examiners must be paid to the Banking Commissioner and by him deposited with the State Treasury to be held in a special fund and used for enforcing the provisions of the credit union law and disbursed as other state moneys. Acts 1941, 47th Leg., R. S., H. B. 845.

0-3100 To: Homer Garrison, Jr., Director, Department of Public Safety
Date: September 8, 1941

The money appropriated in Item 106, p. 1231, S. B. 423, Acts 1941, 47th Leg., may be used in the purchase of suitable land upon which to erect a radio station as authorized by Art. 4413 (15), R. C. S. Arts. 4413 (1), (2), (4), (13), R. C. S.; *Herring v. Houston National Exchange Bank*, 269 S. W. 1031; *Terrell v. Sparks*, 135 S. W. 519.

0-3249 To: Jerry Sadler, Olin Culberson, Commissioners, Railroad Commission of Texas
Date: September 2, 1941

A criminal prosecution cannot be maintained against a person for violating a rate order passed by the Railroad Commission under Sec. 4a, Art. 911b, V. A. C. S. Art. 911a, V. A. C. S.;

Arts. 1, 3, 1690a, 1690b, V. A. P. C.; Acts 1931, 42nd Leg., R. S., H. B. 335; *Russell v. State*, 228 S. W. 566; *Ex parte Wilmoth*, 67 S. W. (2d) 289; *Ex parte Leslie*, 223 S. W. 227. (See opinion for citation of additional authorities.)

0-3345 To: Ernest Guinn, County Attorney, El Paso County
Date: September 10, 1941

H. B. 364, Acts 1941, 47th Leg., which fixes the salaries of county school superintendents, is constitutional, and the salaries for assistants of county superintendents are limited to \$2,000 for one assistant and \$1200 in the aggregate for such additional assistants as may be required and authorized.

Transportation expenses incurred by said assistants in going from their homes to the office to do overtime work and returning is not a proper item of "traveling expenses," and reimbursement thereof cannot be made from funds provided by H. B. 364, supra.

0-3392 To: Thomas D. Broad, Secretary-Treasurer, Board
of Architectural Examiners
Date: September 4, 1941

It is not unlawful for a firm to call itself "A and B, Architects-Engineers" when "A" is a registered professional engineer and "B" is a duly licensed architect, in the absence of a showing that a member of the firm not licensed as such is holding himself out as a "professional engineer" or an "architect," or practicing such professions. Arts. 249a, Sec. 11, 3271a, Sec. 1, V. A. C. S.; Opinion 0-1901.

0-3503 To: Board of Insurance Commissioners
Date: September 19, 1941

A life insurance company organized under the laws of Texas is controlled, with respect to investments in the share or share accounts of the defined building and loan associations, by Sec. 3, Art. 4725, V. A. C. S., as amended, and not by Sec. 25, S. B. 111, Acts 1929, 41st Leg., 2nd C. S. (Art. 881a-24, V. A. C. S.), as amended by Acts 1939, 46th Leg., S. B. 13. Arts. 856, 881a-24, 881a-29, 4725, 4769, 7064, V. A. C. S. Acts 1909, 31st Leg., S. B. 291, Sec. 10; Acts 1931, 42nd Leg., S. B. 218; Acts 1939, 46th Leg., S. B. 13; *Staples v. Kirby Petroleum Co.*, 250 S. W. 293; *Insurance Co. v. Hollifield*, 184 S. W. 776. (See opinion for citation of additional authorities.)

0-3512 To: John S. Rudd, Acting Director, Teacher Retirement System
Date: September 4, 1941

This opinion concerns the status of persons who were employed as "reserve teachers" at the time of the establishment of the Teacher Retirement System and their eligibility for participation in the benefits of the system and related matters. Art. 2922-1, V. A. C. S.; *City of Dallas v. Trammell*, 101 S. W. (2d) 1009.

0-3610 To: S. B. Buchanan, Jr., County Attorney, Val Verde County
Date: September 23, 1941

Under the facts submitted to this department the boundary lines of the school districts in question were not affected by the purported order of the county board of trustees dated July 10, 1928, or the act of the June Common School District in recording certain changes as contained in the said purported order on October 31, 1940. Arts. 2681, 2742i, 2815g-25, V. A. C. S.

0-3631 To: F. E. Mitchell, County Attorney, Callahan County
Date: September 8, 1941

Under the facts presented to this department, wherein judgment was taken in 1940 for taxes, penalties, and interest through the year 1937 on certain property and the property was sold to the State of Texas on January 13, 1941, the owner to redeem his property must pay the \$1 tax deed recording fee, the taxes, penalties, and interest included in the judgment, 6% interest on the judgment, the costs, plus 25% of the aggregate total as outlined in Sec. 12, Art. 7345b, V. A. C. S.; in addition thereto he must pay taxes that have become delinquent since date of judgment, and all penalties and interest not remitted by law. In view of Sec. 10, Art. 7345b, supra, the collection of taxes which were delinquent at the date of judgment may not now be enforced, whether included in the judgment or not. Arts. 7336, 7340, V. A. C. S.; *Bente v. Sullivan*, 115 S. W. 350; *Pearsall Ind. School Dist. v. Widner*, 136 S. W. (2d) 647; *Mexia Ind. School Dist. v. City of Mexia*, 133 S. W. (2d) 118; Opinion 0-1965.

0-3737 To: Claude A. Williams, Chairman and Executive Director, Texas Unemployment Compensation Commission
Date: September 4, 1941

The provisions of Sec. 2, H. B. 423, Acts 1941, 47th Leg., do not apply to the manner and method of purchasing supplies

and equipment by the Texas Unemployment Compensation Commission out of Federal Unemployment Compensation Administration Funds when such purchases are made in the manner and method as required by the Social Security Board. 42 U. S. C. A., Secs. 502(a), 503(a); Art. 5221b-9, V. A. C. S.; Acts 1941, 47th Leg., H. B. 499.

0-3753 To: George H. Sheppard, Comptroller of Public
Accounts

Date: September 22, 1941

In computing the inheritance tax, the estate of the decedent in question is entitled to a deduction of the property inherited and previously taxed within five years only to the extent that it can be shown that the estate still contains the property or that the property is traceable thereto. Arts. 7117, 7125, V. A. C. S.; Acts 1929, 41st Leg., R. S., H. B. 12; Acts 1939, 46th Leg., R. S., H. B. 990.

0-3765 To: George H. Sheppard, Comptroller of Public
Accounts

Date: September 4, 1941

Under the facts submitted to this department, the transactions taxable under the Stock Transfer Act are as follows: (1) the transfer of the legal title of voting trust certificates from a subscriber to a voting trustee; (2) the delivery or redelivery by said voting trustee to the holder of the beneficial interest at the termination of the trust; and (3) the transfer of the equitable title of such certificates from one subscriber to another subscriber, legal title remaining with the voting trustee. All three of these taxable transactions will be governed by the principles announced in Opinion 0-3713 and the tax computed on the basis of the par value of the stock represented by the voting trust certificates.

The issuance and delivery of the voting trust certificates in question by the voting trustees is not a taxable transfer as the same is tantamount to an original issue of stock, which has been held not subject to this tax measure in Opinion 0-3594. Acts 1941, 47th Leg., H. B. 8, Art. XV; *Cliffs Corps v. United States*, 103 F. (2) 77; *Chicago Great Western Ry. Co. v. State*, 135 N. E. 960; *United States v. Baker*, 115 F. (2) 129; 13 Am. Jur. 539; 39 Tex. Jur. 264-265. (See opinion for citation of additional authorities.)

0-3768 To: Harry Knox, Chairman, Board of Control
Date: September 23, 1941

The State Board of Control is not required to approve the plans and designs and let the contracts for the construction of

buildings or other major improvements at the State's higher educational institutions. Arts. 670-673, 681, 2592, 2593, 2596, 2613-9, 2613a-1, 2616, 2620, 2625, 2628a-7, 2628a-8, 2628b, R. C. S.; Art. 2647a, Sec. 1, V. A. C. S.

0-3775 To: W. A. Davis, State Registrar of Vital Statistics, Texas State Board of Health
Date: September 5, 1941

A birth or death record which is filed in the county clerk's office but not filed with the Bureau of Vital Statistics should be considered a birth or death "not previously recorded," as that term is used in Rules 34a to 55a, inc., Art. 4477, V. A. C. S. The only way a record which has been filed with the county clerk may be filed with the State Registrar is by compliance with that portion of Rule 51a, supra, relating to the filing of unregistered birth or death certificates. The State Registrar is neither authorized nor required to request or accept a certified copy of a birth or death certificate which is duly filed in the county clerk's office but which has never been filed with the State Registrar. Acts 1939, 46th Leg., H. B. 614; Acts 1941, 47th Leg., H. B. 624; Acts 1941, 47th Leg., H. B. 821; Acts 1941, 47th Leg., H. B. 974; Opinions 0-1201, 0-1386.

0-3782 To: George H. Sheppard, Comptroller of Public Accounts
Date: September 13, 1941

This opinion concerns the authority of the Tax Assessor-Collector of Rusk County to levy on the personal property to collect taxes assessed against the Hurricane Petroleum Corporation, which is in receivership and which property has been sold by the receiver in satisfaction of preferred and prior liens. Art. 7065a-7, V. A. C. S.

0-3798 To: O. J. S. Ellingson, General Manager, Texas Prison System
Date: September 20, 1941

Under the facts submitted to this department, the person in question, having secured his liberty from the State Penitentiary of Texas by virtue of a void order from the district court, may be retaken as if he had escaped and be compelled to serve out the balance of his term unserved at the time of his release on said void order. Art. XVI, Sec. 5, Constitution of Texas; Art. 119, V. A. C. C. P.; *Ex parte Patterson*, 141 S. W. (2d) 319; *Letcher, et al., v. Crandell*, 44 S. W. 197, 6 C. J. S. 627. (See opinion for citation of additional authorities.)

0-3838 To: C. H. Robinson, Secretary-Treasurer, Board of
Chiropraxy Examiners
Date: September 2, 1941

The per diem compensation and expenses of members of the Board of Chiropraxy Examiners includes days or fractions of days spent in going to or returning from board meetings. Members may use their own automobiles in such travel and be reimbursed on a mileage basis upon adoption by the Board of reasonable regulations similar or in line with other state mileage allowance. Art. 4574, R. C. S.; Acts 1941, 47th Leg., S. B. 423; *State v. Hurn*, 172 Pac. 1147; Opinion 0-1402.

0-3840 To: George H. Sheppard, Comptroller of Public
Accounts
Date: September 15, 1941

The residue of the estate of the individual in question, which was left to the American Red Cross, is subject to the inheritance tax schedule set out in Art. 7122, R. C. S., since the devise does not require same to be used in the State of Texas. Arts. 7119, 7120, R. C. S.; *Snyder v. Bettman*, 190 U. S. 249; *Willcuts v. Bunn*, 282 U. S. 216; Opinion 0-2816.

0-3852 To: D. C. Greer, State Highway Engineer
Date: September 19, 1941

If the State Highway Commission determines that it is advantageous to the State, it may require all contractors to use paint which has been purchased by the State Highway Department and deduct the cost of such paint from the estimates of the contractors, but it has no authority to charge contractors more than the cost of such paint. Arts. 6663, 6674k, V. A. C. S.; *Nairn v. Bean*, 48 S. W. (2d) 586; *Mosheim v. Rollins*, 79 S. W. (2d) 672.

0-3855 To: Charley Lockhart, State Treasurer
Date: September 2, 1941

Under the provisions of Art. 4739, V. A. C. S., any insurance company named therein may, at its option, deposit with the State Treasurer securities equal to the amount of its capital stock regardless of the motive which prompts such tender and deposit. Art. 4993, V. A. C. S.

0-3864 To: George H. Sheppard, Comptroller of Public
Accounts
Date: September 10, 1941

Under the facts presented to this department, the warrant for the payment of examining trial fees should be made payable to the county attorney even though the services were rendered by the assistant county attorney in the absence of said county attorney. Arts. 3891, 3897, 3899, 3902, V. A. C. S.; Art. 1020, C. C. P.

0-3869 To: Cullen B. Vance, County Attorney, Jackson
County
Date: September 10, 1941

The Lolita Independent School District is governed in the assessment and collection of its taxes by the laws relating to independent school districts despite the fact that its scholastic census is less than 150.

Under the provisions of Art. 2792, R. C. S., as amended, if an independent school district chooses to have its taxes assessed and collected by the county assessor-collector, the property in that district may be assessed at a greater value than the property is assessed for State and county purposes. Arts. 2763, 2792, R. C. S.; 54 Conference Opinions 204.

0-3873 To: Tom L. Hartley, Criminal District Attorney,
Edinburg
Date: September 15, 1941

Sec. 5, H. B. 186, Acts 1941, 47th Leg., R. S., does not prohibit the hunting, taking, shooting, or killing of wild ducks, or other migratory birds (other than all kinds and species of white-winged doves and chachalaca) in the area designated in said section. Acts 1941, 47th Leg., R. S., H. B. 186, Secs. 1, 3, 4; *Red River National Bank v. Ferguson*, 206 S. W. 923; *Loyd's Casualty Co. v. Lem*, 62 S. W. (2d) 497; *Missouri-Kansas-Texas Ry. Co. v. Thomason*, 280 S. W. 325; 39 Tex. Jur. 226; Sutherland, Statutory Construction, Sec. 257, p. 338.

0-3875 To: Jos. B. Dart, County Attorney, Kendall County
Date: September 8, 1941

"Good witnesses," as the term is used in Sec. 2, Art. 968, C. C. P., is not limited to witnesses to the cause of death; therefore, a justice of the peace is not precluded from holding an inquest merely because a person dies in the presence of a

physician. *Polk County v. Phillips*, 51 S. E. 328; *Aetna Casualty and Surety Co. v. Love*, 99 S. W. (2d) 646, 121 S. W. (2d) 986; *Pierson v. Galveston County*, 131 S. W. (2d) 27.

0-3877 To: D. C. Greer, State Highway Engineer, Texas
Highway Department
Date: September 9, 1941

Under the facts presented to this department, the position occupied by a receiver differs in no respect from that occupied by the contractor, and insofar as payment of funds due from the Highway Department to a highway contractor is concerned the receiver is entitled to no rights over and above those possessed originally by the contractor.

0-3878 To: Homer Garrison, Jr., Director, Department of
Public Safety
Date: September 19, 1941

When a person is convicted of driving while intoxicated, his operator's, commercial operator's, and/or chauffeur's license are automatically suspended when the conviction becomes final. Insofar as the operation of the driver's license law is concerned a conviction is a "final conviction" within its terms even though judgment be deferred in accordance with the provisions of Art. 698, C. C. P. Acts 1941, 47th Leg., H. B. 20, Sec. 24; Acts 1941, 47th Leg., H. B. 73; Art. 802, P. C.; Arts. 826, 850, 851, C. C. P.; Opinion 0-3482.

0-3879 To: J. S. Murchison, Executive Director, Department of Public Welfare
Date: September 10, 1941

Salaries of employees of the Department of Public Welfare may be increased or supplemented by federal funds allocated to said department for administrative purposes. Acts 1941, 47th Leg., H. B. 611; Acts 1941, 47th Leg., S. B. 423.

0-3886 To: Herbert C. Martin, District Attorney, Littlefield
Date: September 8, 1941

A taxing unit may sell property purchased in a proceeding under Art. 7345b, V. A. C. S., for less than the adjudged value or the total amount of the judgment awarded in the suit against the property with the consent of all of the parties to the suit, and consent in behalf of the State may be given by the county tax collector. If the property is sold for more than its adjudged value, consent of the other taxing units is not necessary.

0-3889 To: R. L. Armstrong, County Auditor, Tom Green
County
Date: September 8, 1941

Under the provisions of Art. 1645, V. A. C. S., as amended by S. B. 119, Acts 1941, 47th Leg., the county auditor's salary must be paid out of the General Fund of the county. Arts. 1626, 1627, 1628, V. A. C. S.

0-3890 To: C. Woodrow Laughlin, County Attorney, Jim
Wells County
Date: September 8, 1941

The costs incurred in the purchase or establishment of a "bookmobile library," as discussed in Opinion 0-3055, and the expenses incurred in maintaining and operating the same cannot be paid out of the permanent improvement fund, but must be paid out of the general fund of the county. Art. VIII, Sec. 9, Constitution of Texas; Arts. 1678, 1679, V. A. C. S.; Acts 1915, 34th Leg., Ch. 117, p. 175; *Carroll v. Williams*, 202 S. W. 504; *Commissioners' Court of Henderson County v. Burke*, 262 S. W. 94; 11 Tex. Jur. 609; Opinions 0-696, 0-2538.

0-3891 To: I. Predecki, County Auditor, Galveston County
Date: September 9, 1941

H. B. 45, Acts 1941, 47th Leg., known as the Texas Defense Guard Act, authorizes the county auditor to sign warrants drawn for the purposes set out in Sec. 4 of said act.

0-3892 To: H. N. Darst, County Auditor, Fort Bend County
Date: September 8, 1941

Art. 3899, R. C. S., vests in the commissioners' court the right and authority to approve reasonable and necessary traveling expenses for a constable on a fee basis, but such items must be paid by the constable out of his fees of office and reported monthly as said statute requires. Opinion 0-1284.

0-3893 To: Charley Lockhart, State Treasurer
Date: September 9, 1941

The Oklahoma mortgage submitted to this department is subject to the stamp tax when filed in a Texas county. Art. 7047e, V. A. C. S.

0-3895 To: C. E. Patterson, County Attorney, Brewster County
Date: September 13, 1941

The commissioners' court may assist in the payment of salaries of as many government wolf trappers as the court in its sound discretion determines to be necessary, such payments to be made from the general fund of the county. Art. 192b, Secs. 1, 4, 5, 6, V. A. C. S.; Opinion 0-2709.

0-3896 To: Jos. B. Dart, County Attorney, Kendall County
Date: September 9, 1941

In a county where county officials are compensated on a fee basis, the ex officio compensation of such officers must be considered and accounted for in arriving at the maximum annual compensation of said officials. Arts. 3883, 3891, 3895, 3896, 3897, 3899, V. A. C. S.; *Anderson County v. Hopkins*, 187 S. W. 1019; *Nichols v. Galveston County*, 238 S. W. 547.

0-3897 To: Wm. J. Lawson, Secretary of State
Date: September 19, 1941

Under the facts submitted to this department, "Cooperative Advancement Incorporated," the purpose of which corporation is to "organize laborers, workingmen, wage earners, and farmers, and business people to protect and advance themselves in their various pursuits," does not have authority to issue memberships in the manner set out in its constitution. Art. 1302, Sec. 83, R. C. S.; Acts 1941, 47th Leg., H. B. 16; *Smith v. Worthan*, 157 S. W. 740; *Moser v. Greenland Hills Realty Co.*, 300 S. W. 177; *Fletcher Cyclopedia Corporations*, Vol. 2, p. 1764, et seq.; 10 Tex. Jur. 624, 852, 875, 876.

0-3898 To: T. M. Trimble, First Assistant State Superintendent of Public Instruction
Date: September 11, 1941

Under Sec. 3, S. B. 163, Acts 1941, 47th Leg., those colleges named in the act which qualify under the same are to be given the benefits therein provided and only those junior colleges named in the act are to participate in the appropriation.

0-3899 To: C. J. Wilde, County Auditor, Nueces County
Date: September 13, 1941

Under Sec. 2, Art. 3899b, V. A. C. S., if the commissioners' court determines, within its discretion, that it will furnish suit-

able offices, etc., to resident district judges of the county, it is authorized to install telephones in such offices and pay the monthly rentals thereon. However, this statute is not broad enough to authorize said court to pay for long distance telephone calls contracted by resident district judges over these or any other telephones. Art. 6820, R. C. S.

0-3900 To: C. J. Wilde, County Auditor, Nueces County
Date: September 8, 1941

A deputy shorthand reporter, while serving for the official shorthand reporter, shall be paid the same amount as the official shorthand reporter, and the question of how much time said deputy acts for the official, though he spends but fifty per cent of his time in the execution of the duties imposed upon him, is a fact question vested in the hands of the court in which he serves. Art. 2323, R. C. S.

0-3901 To: Melvin Combs, County Attorney, Jefferson County
Date: September 9, 1941

Under the facts presented to this department, if the residents of Louisiana in question are operating privately owned and duly registered motor vehicles within the terms of the proviso of Sec. 5, Art. 827b, V. A. P. C., then the other terms of said Art. 827b do not apply. The certificate provided for in Sec. 4, Art. 827b, supra, cannot cover a period of time greater than 120 days from the date the "non-resident" arrived in Texas. 39 Tex. Jur. 209-212.

0-3902 To: Dan W. Jackson, District Attorney, Harris County
Date: September 13, 1941

A unit of the Texas Defense Guard selling beer in Texas for the sole use of the members of such unit is required to obtain a State license authorizing such sale. Art. 667, Sec. 3, P. C.; Art. 5891a, V. A. C. S.; Art. 5247, R. C. S.; *Standard Oil Company of California v. California*, 291 U. S. 242.

0-3903 To: John S. Rudd, Acting Executive Secretary,
Teacher Retirement System
Date: September 23, 1941

Under the facts presented to this department, the Board of Trustees of the Teacher Retirement System may enter an order for a warrant refunding payments made into the Treasury in

error and the Comptroller is authorized to issue the same. Art. 2922-1, Secs. 2, 7(1), 7(3), 8-1(a), 8-1(b), 8-1(c), 8-8(1) (d), 11, V. A. C. S.; *Corsicana Cotton Mills v. Sheppard*, 71 S. W. (2d) 247; *Friedman v. American Surety Company*, 151 S. W. (2d) 570.

0-3904 To: T. M. Trimble, First Assistant State Superintendent of Public Instruction
Date: September 9, 1941

Art. 1048, R. C. S., which provides that the city council of cities and towns incorporated under the general laws shall appoint three commissioners to be styled the board of equalization, does not apply to the Amarillo Independent School District, which, under the authority of Art. 2791, has appointed its own tax assessor-collector. This being true, it is incumbent upon it to appoint its own Board of Equalization and it may appoint any number it deems reasonably necessary to carry out the functions of said board. Acts 1909, 31st Leg., S. B. 10, Ch. 8; *Chambers v. Cook*, 132 S. W. 865; *Miller v. Vance*, 180 S. W. 739; *Welder v. Sinton Ind. School Dist.*, 218 S. W. 106; *Blewett v. Richardson Ind. School Dist.*, 230 S. W. 255, 240 S. W. 529.

0-3906 To: John D. Reed, Commissioner, Bureau of Labor Statistics
Date: September 5, 1941

This opinion concerns the notice, hearing, and adoption of new rules by the Bureau of Labor Statistics in accordance with Secs. 6 and 16, Art. 5221c, V. A. C. S., and approves the proposed "Rule 26" to be added to the Boiler Inspection Rules and Regulations.

0-3909 To: George H. Sheppard, Comptroller of Public Accounts
Date: September 15, 1941

Art. II, H. B. 8, Acts 1941, 47th Leg., (Art. 7047b, V. A. C. S.) is inoperative and of no effect insofar as it attempts to tax natural gas produced in states other than Texas. *Louisville & Jefferson Ferry Co. v. Kentucky*, 188 U. S. 385; *Provident Savings Life Assurance Society v. Kentucky*, 237 U. S. 103; 26 R. C. L. 34; 26 R. C. L. 295.

0-3910 To: O. P. Lockhart, Chairman, Board of Insurance Commissioners
Date: September 19, 1941

The removal of a receiver appointed by the court for an insurance company may be effected by a motion by an interested party, supported by competent evidence as to the desirability and the necessity of the change, and the court may, if the removal is made, appoint the statutory liquidator of the Board of Insurance Commissioners or any other person he desires. Art. 5068c, R. C. S.; Opinion 0-3695.

0-3911 To: Roy E. Jackson, District Attorney, El Paso
Date: September 13, 1941

Art. 167, R. C. S., permits an alien to acquire and hold land in any incorporated city or town without reference to the exceptions contained in Art. 167, supra. Art. 166, R. C. S.; 3 C. J. S. 540, 544.

0-3912 To: W. C. Huffaker, County Attorney, Lynn County
Date: September 13, 1941

A person who, prior to June 17, 1941, was convicted of driving a motor vehicle while under the influence of intoxicating liquor and thereafter and also prior to June 17, 1941, committed the second offense of driving a motor vehicle while under the influence of intoxicating liquor, may be indicted by the grand jury; but he may be tried for a felony in the district court only upon his election as provided by Arts. 13 or 15, P. C. Art. V, Secs. 8, 16, 22, Constitution of Texas; Arts. 802, 802b, P. C.; Acts 1937, 45th Leg., H. B. 73; Acts 1941, 47th Leg., H. B. 73; *Mora v. State*, 9 Tex. Cr. R. 406; *Johnson v. State*, 9 S. W. 611; Opinion 0-3740.

0-3914 To: J. M. Preston, County Attorney, Childress County
Date: September 19, 1941

When a person who has been indicted for the offense of operating a motor vehicle upon a public highway while intoxicated prior to June 17, 1941, but after that date the case is transferred from the district court to the county court, and then when the case is called for trial in the county court the accused elects to be tried under the old law, such election deprives the county court of jurisdiction, and the accused cannot be refused the right of election. Art. V, Sec. 16, Constitution of Texas; Art. 56, C. C. P.; Arts. 13, 423, 802, V. A. P. C.; Acts 1941, 47th Leg., H. B. 73, Sec. 1; *Philpott v. State*, 62 S. W. 291; Opinions 0-3740, 0-3912.

0-3917 To: John S. Rudd, Jr., Acting Director, Teacher Retirement System
Date: September 26, 1941

The Board of Trustees of the Teacher Retirement System has no authority to rule that a person has not established credit for prior service unless such person rendered $4\frac{1}{2}$ months' service in 1937-38, the extent required for such service to be considered as "a creditable year of service" according to regulations adopted by said board of trustees. However the board may require a minimum time to have been served during said school year, but such time must be of short duration. Art. 2922-1, Secs. 3(1), 3(2), 3(5), 4(1), 4(2), 4(3), V. A. C. S.

0-3919 To: Wayne Lefevre, County Auditor, Clay County
Date: September 9, 1941

Under Art. 5561, V. A. C. S., the sheriff is entitled to the same fees and mileage expenses as provided for in misdemeanor cases by Art. 1065, C. C. P., as costs in lunacy proceedings to be paid by the county if the person of unsound mind or some person who is legally liable for his support has no estate out of which said fees may be paid.

The sheriff is entitled to receive only actual expenses incurred in conveying lunatics to the State Asylum as authorized by Art. 3194, V. A. C. S.; *Ex parte Singleton*, 161 S. W. 123; *White v. White*, 196 S. W. 508; *Lindsey v. Wood, et ux.*, 25 S. W. (2d) 263; 24 Tex. Jur. 388; Opinions 0-987, 0-3198.

0-3920 To: Homer P. Rainey, President, The University of Texas
Date: September 20, 1941

If effective work and good administration require it, an individual salary item listed in the Educational Appropriation Bill for a particular position may be converted into two or more part-time positions with the total sum to be expended not to exceed the total amount appropriated for such particular position. Opinion 0-1006 distinguished. Acts 1941, 47th Leg., H. B. 272; Acts 1929, 41st Leg., S. B. 46; Acts 1927, 40th Leg., 1st C. S., p. 306; Acts 1931, 42nd Leg., R. S., p. 730; Acts 1933, 43rd Leg., R. S., p. 510; Acts 1937, 45th Leg., R. S., p. 1489; Acts 1939, 46th Leg., R. S., S. B. 427.

0-3921 To: Charles E. Reagan, Criminal District Attorney, Marlin
Date: September 29, 1941

Under the facts presented to this department, an individual who owns a tract of land which contains less than 200 acres,

is valued at less than \$3,000, and lies in two counties may claim the homestead exemption in both counties. Art. VIII, Sec. 1a, Constitution of Texas; Art. XVI, Sec. 51, Constitution of Texas.

0-3922 To: T. M. Trimble, First Assistant State Superintendent of Public Instruction
Date: September 15, 1941

Since Arts. IV and V, H. B. 8, Acts 1941, 47th Leg., R. S., expressly denies cities the authority to impose occupation taxes on telephone, electric, water, and gas companies, the city schools in Cameron cannot participate in taxes which are non-existent. Arts. 7060, 7070, Sec. 2, R. C. S.

0-3925 To: F. L. Massie, County Auditor, Wilbarger County
Date: September 15, 1941

The Sheriff of Wilbarger County is entitled to employ, in addition to a first deputy, as many additional deputies as he is authorized to employ by an order of the commissioners' court, acting upon application of the sheriff filed in accordance with the provisions of Art. 3902, V. A. C. S. Art. 6869, V. A. C. S., which applies to sheriffs under the fee law, has been superseded insofar as it applies to Wilbarger County. Opinions 0-12, 0-2686.

0-3926 To: George H. Sheppard, Comptroller of Public Accounts
Date: September 20, 1941

Under the facts presented to this department, the Comptroller of Public Accounts is authorized to issue warrants in payment of the claim of the court reporter in question for preparing the statement of facts in perfecting an appeal in behalf of the Railroad Commission on the basis of fifteen cents per 100 words. Art. XVI, Sec. 33, Constitution of Texas; *Dunn, et al., v. Allen, et al.*, 63 S. W. (2d) 857.

0-3928 To: J. T. McMillan, Deputy Commissioner, Department of Banking
Date: September 23, 1941

This opinion concerns the authority of the Banking Commissioner in the allocation of the lump sum departmental appropriation to the State Banking Department for the supervision of building and loan associations, loan and brokerage companies, and credit unions. Arts. 881a, 1524a, V. A. C. S.; Arts. 362, 363, R. C. S.; Acts 1941, 47th Leg., R. S., S. B. 423; Acts

1941, 47th Leg., R. S., H. B. 845; *State v. Steele*, 57 Tex. 203; *Linden v. Finley*, 92 Tex. 451; *Spears v. Sheppard*, 150 S. W. (2d) 769; Opinions 0-1837, 0-2641.

0-3929 To: T. M. Trimble, First Assistant State Superintendent of Public Instruction
Date: September 16, 1941

The status of a person otherwise a qualified voter in a school district is not affected by the fact that his child is transferred to another school district. 16 Tex. Jur. 42.

0-3931 To: F. L. Massie, County Auditor, Wilbarger County
Date: September 29, 1941

The county-wide election for the purpose of voting on the issuance of airport bonds as described to this department is a special election and the judge and clerks of said election should be compensated in accordance with Art. 2943, V. A. C. S., and not in accordance with the compensation provided in Art. 2938, V. A. C. S. Arts. 704, 1269h, Sec. 2, V. A. C. S.; 20 C. J. 56; Opinions 0-1323, 0-3682.

0-3932 To: O. P. Lockhart, Chairman, Board of Insurance Commissioners
Date: September 16, 1941

Under the facts presented to this department, the Board of Insurance Commissioners may authorize the examiner to give his deposition in the case in question, and if such is refused, the receiver may proceed under the pertinent statutes to require the witness to testify. Art. 4690c, V. A. C. S.

0-3935 To: George H. Sheppard, Comptroller of Public Accounts
Date: September 20, 1941

The rider to the appropriation to the Motor Fuel Tax Division of the Comptroller's Department appropriating the "balances on hand at August 31, 1941, and August 31, 1942" in the one per cent motor fuel tax administration fund is a valid and legal appropriation to the Comptroller of Public Accounts. Acts 1941, 47th Leg., R. S., H. B. 8, Art. XVII, Sec. 25; *Linden v. Finley*, 92 Tex. 451; *State v. Steele*, 57 Tex. 200; *Conley v. Daughters of Republic*, 156 S. W. 197; Opinions 0-700, 0-1837, 0-2573.

0-3939 To: State Board of Education
Date: September 20, 1941

The State Board of Education has no authority to approve an assignment of a textbook contract. The original contracting publisher may contract with a second publisher but remains liable on his bond for the fulfillment of the terms of the original contract. Arts. 2675b-5, 2846, 2847, 2852, 2853, V. A. C. S.; Acts 1929, 41st Leg., 2nd C. S., Ch. 10, Sec. 5; 34 Tex. Jur. 440-441.

0-3940 To: Walker Carson, County Attorney, Hudspeth County
Date: September 15, 1941

A person is not required to be licensed nor is he required to be a licensed surveyor to fill a vacancy in the office of county surveyor. Art. XVI, Sec. 44, Constitution of Texas; Arts. 5283-5298, inc.; 5299, V. A. C. S.; Acts 1941, 47th Leg., R. S., S. B. 351; Opinion 0-3719.

0-3942 To: George H. Sheppard, Comptroller of Public Accounts
Date: September 23, 1941

Under the facts submitted to this department, the Comptroller is authorized to pay a proportionate part of the cost of the compilation of only that part of the four year supplement to the delinquent tax record which represents the years 1938 and 1939, under the provisions of Art. 7336f, V. A. C. S., and is not liable for any part of such compilation costs for years 1936 and 1937. 46 C. J. 1018-1019; 34 Tex. Jur. 508-509.

0-3943 To: Bascom Giles, Commissioner, General Land Office
Date: September 23, 1941

The General Land Office has no authority to refund rental payments paid into the General Fund by allowing oil and gas lessees to deduct same from royalty payments due the State. *Galveston County v. Gorham*, 49 Tex. 279; *Gilliam v. Alford*, 6 S. W. 757; *Taylor v. Hall*, 9 S. W. 141; *Texas Co. v. Davis*, 255 S. W. 601; *Cox v. Sinclair Gulf Oil Company*, 205 S. W. 196; *W. T. Waggoner Estate v. Siegler Oil Company*, 19 S. W. (2d) 27.

0-3946 To: Karl Kayton, County Attorney, Dawson County
Date: September 19, 1941

The justice of the peace is not the local registrar of births and deaths in an incorporated city or town within his precinct when such city or town contains a population of 2,500 or more inhabitants according to the last United States census. Art. 4477, Rule 36a, V. A. C. S.; Acts 1941, 47th Leg., H. B. 821.

0-3947 To: Will Mann Richardson, Assistant Secretary of State
Date: September 30, 1941

The Secretary of State has the authority to grant to the Riverside State Warehouse Company, a corporation organized and incorporated under the provisions of Ch. 3, Title 93, R. C. S., an extension of its charter after such application for an extension has been filed with and approved by the Commissioner of Agriculture. Arts. 1315 (a), 1315 (b), 5578-5611, V. A. C. S.; Acts 1925, 39th Leg., Ch. 13.

0-3949 To: Clifford B. Jones, President, Texas Technological College, Lubbock
Date: September 16, 1941

Texas Technological College has no authority to offer as a "terminal adjustment" one year's salary to a professor "in lieu of his continuance," the facts showing that no renewal of the professor's contract has been had nor is a renewal contemplated. Art. III, Sec. 51, Constitution of Texas.

0-3951 To: George H. Sheppard, Comptroller of Public Accounts
Date: September 23, 1941

A district attorney inducted into active service as a member of the National Guard in field and coast defense training is entitled to compensation during the period of time so engaged only for a period of time not longer than twelve days during any one calendar year, such twelve day period to be in lieu of any or all other vacations with pay, under the provisions of Acts 1931, 42nd Leg., R. S., H. B. 427. H. B. 765, Acts 1941, 47th Leg., R. S., relieves only members of the legislature from the restriction limiting leaves of absence with pay. Opinions 0-3456, 0-3773.

0-3954 To: Ernest Quinn, County Attorney, El Paso County
Date: September 19, 1941

The property of a subscriber to a water control and improvement district cannot become liable to the payment of bonds issued by such district under the provisions of Art. 7880, Subdiv. 90a, V. A. C. S.

The board of directors of such district cannot compel an owner of property within the district to subscribe to the services of such district as revenue bonds issued by the district are not binding on the said property owner in lieu of a contract for services. The bondholders may compel the district to levy and collect reasonable rates sufficient to service the outstanding bonds where the revenues have become inadequate. *Dayton v. Allred*, 68 S. W. (2d) 172.

0-3959 To: Albert J. Hutson, County Attorney, Trinity
County
Date: September 23, 1941

The commissioners' court may, in its discretion, legally purchase U. S. Defense Bonds with the permanent school fund of the county. Art. VIII, Secs. 2, 6, Constitution of Texas; Art. 2824, V. A. C. S.; *Boydston v. Rockwall County*, 24 S. W. 272.

0-3964 To: Jos. B. Dart, County Attorney, Kendall County
Date: September 23, 1941

This opinion defines the terms "motor carrier," "common carrier" and "contract carrier" and outlines the conditions and laws governing, the certificates and permits necessary, and other duties imposed on the operators of motor propelled vehicles for hire in transporting property. Art. 911b, Secs. 1(g), 2, 3, 1(h), 16, V. A. C. S.

0-3965 To: T. M. Trimble, First Assistant State Superintendent of Public Instruction
Date: September 25, 1941

The proposed conveyance of the school property in question to the City of Brownsville does not comply with the provisions of Art. 2773, V. A. C. S., in that same is not a sale "for the purpose of investing in more convenient and more desirable school property" and, therefore, cannot be made. Acts 1915, 34th Leg., H. B. 594, Ch. 63, p. 209; Opinion 0-415.

0-3966 To: C. E. Patterson, County Attorney, Brewster
County
Date: September 23, 1941

A county attorney may at the same time serve as a trustee of an independent school district created under the general law. Art. XVI, Sec. 40, Constitution of Texas; Arts. 2775, 2777, R. C. S.; *Thomas v. Abernathy County Line Independent School District*, 278 S. W. 313; *Kugle v. Glen Rose Independent School Dist. No. 1*, 50 S. W. (2d) 375; 34 Tex. Jur. 349.

0-3967 To: Cecil H. Tate, County Attorney, Bailey County
Date: September 23, 1941

The county attorney is not required by law to perform the services in question in connection with an election to consolidate independent school districts, but said districts may legally contract with the county attorney to perform such services and pay for the same out of the special maintenance fund. Art. 334, V. A. C. S.; *Brady v. Brooks*, 89 S. W. 1052; 37 Tex. Jur. 945; Opinion 0-2397.

0-3968 To: L. R. Thompson, County Auditor, Taylor County
Date: September 23, 1941

The county tax assessor-collector is not entitled to mileage or expenses incurred on trips to Austin or on trips to collect bad checks. Art. 3899, V. A. C. S.; Opinions 0-2475, 0-3701.

0-3973 To: James E. Kilday, Director, Motor Transportation
Division, Railroad Commission
Date: September 23, 1941

Where a motor carrier has a certificate of public convenience and necessity issued by the Interstate Commerce Commission and operates on an irregular route, the Railroad Commission may grant an application of such motor carrier for the use of the State highways in conformity with its interstate certificate.

Such motor carriers are not obligated by the Texas Motor Carrier Act to perform regularly the services authorized by the certificate, but are under the rules and regulations of the Interstate Commerce Commission.

No further authority for the use of the State highways by such motor carriers would be necessary upon being issued a certificate for such purpose by the Railroad Commission. 49 U. S. C. A. 308; 49 U. S. C. A. 301; Art. 911b, V. A. C. S.; *Thompson v. McDonald*, 95 F. (2) 937; *Winton v. Thompson*, 123 S. W. (2d) 95; Opinions 0-2608, 0-1843, 0-3107.

0-3974 To: I. C. McWhirter, County Auditor, Hunt County
Date: September 20, 1941

The commissioners' court has no legal authority to pay for permanent record books and typewriters out of the courthouse and jail fund which is or constitutes a portion of the permanent improvement fund. Art. VIII, Sec. 9, Constitution of Texas; *Commissioners' Court of Henderson County v. Burke*, 262 S. W. 94; *Ault v. Hill County*, 116 S. W. 359; *Underwood v. Howard*, 1 S. W. (2d) 730; *Carroll v. Williams*, 202 S. W. 504; 11 Tex. Jur. 609.

0-3976 To: T. K. Wilkinson, County Auditor, Hill County
Date: September 20, 1941

The Constables of Hill County, being on a fee basis, are entitled to such mileage in felony cases as is provided in Arts. 1020, 1030, C. C. P., and are entitled to such mileage in misdemeanor cases as is provided in Art. 1065, C. C. P., to be taxed against defendant on conviction, and Art. 1055, C. C. P., as provided therein.

The Sheriff of Hill County, being compensated on a salary basis, is not personally entitled to any mileage under the above mentioned statutes in view of Art. 3912e, Secs. 3, 4, 5, V. A. C. S., but is required to collect all fees and mileage authorized by law and to deposit the same in the officers' salary fund. Under Art. 3899, V. A. C. S., such sheriffs are allowed four cents per mile traveled in the discharge of their official duties in their own automobiles.

0-3982 To: Clifford B. Jones, President, Texas Technological College, Lubbock
Date: September 18, 1941

The Legislature can authorize a sale or a lease of a portion of the campus of Texas Technological College not otherwise necessary for the use of the college to the City of Lubbock so that the city may erect an auditorium thereon. *Conley v. Daughters of the Republic*, 156 S. W. 197.

0-3987 To: O. P. Lockhart, Chairman, Board of Insurance Commissioners
Date: September 23, 1941

The agents and attorneys of an insurance company are not entitled to copy letters written by private parties to the Board of Insurance Commissioners about such insurance companies. Art. 4682, Sec. 15, R. C. S.; 27 Tex. Jur. 433; 51 L. R. A. 360-361; opinions 0-2044, 0-3755.

0-3996 To: H. L. Mills, Chairman, Teacher Retirement Board
Date: September 24, 1941

Neither a member of the Legislature nor the husband of a first cousin of a member of the Teacher Retirement Board may serve as Executive Secretary of the Teacher Retirement System. Art. III, Sec. 18, Constitution of Texas; Arts. 432, 433, P. C.; Art. 2922-1, Sec. 6, Subsec. 8, V. A. C. S.; *The Tyler Tap R. R. Co. and James P. Douglass v. John F. Overton*, 1 Tex. Ct. App. 267; *State v. Hooper*, 37 P. 52; 2 C. J. 379; Opinion 0-1091. (See opinion for citation of additional authorities.)

0-3998 To: George H. Sheppard, Comptroller of Public Accounts
Date: September 30, 1941

Members of the Public Safety Commission are entitled to reimbursement for actual expenses only, with the limitation of \$10 for any one day or \$500 for any one year, and such expenses must be itemized before the Comptroller is authorized to pay the same. As said members receive no salary or per diem, they are excepted from the operation of Subsec. 12 (g), S. B. 423, Acts 1941, 47th Leg., (Departmental Appropriation Bill) as to the limitation of \$4 per day for meals and lodging. Art. 4413 (2), V. A. C. S.; Acts 1941, 47th Leg., S. B. 423, Subsec. 13 (f).

0-4009 To: Charley Lockhart, State Treasurer
Date: September 30, 1941

In a deed wherein a husband conveys to his wife his interest in a homestead, and the wife assumes an indebtedness against said property due to an exempt agency, said deed is subject to the stamp tax. The pre-existing indebtedness assumed by the wife should be considered in arriving at the amount of tax to be paid, and the tax should be figured on the entire amount assumed. Art. 7047e, V. A. C. S.; *Burton-Lingo Co. v. Standard*, 217 S. W. 446; *Sanger Bros. v. Russell*, 289 S. W. 133; *Gonzalez v. Zachry*, 84 S. W. (2d) 855; *Hable v. Owens*, 287 S. W. 155; *Dale v. Stephens*, 75 S. W. (2d) 129; Opinion 0-1328.

0-4017 To: Charley Lockhart, State Treasurer
Date: September 30, 1941

The supplemental indenture between the Cities Service Oil Company and the Chase National Bank submitted to this department is not subject to the stamp tax, since no lien interest is created therein. Art. 7047e, V. A. C. S.

0-4024 To: Harry Knox, Chairman, Board of Control
Date: September 30, 1941

Neither the general rider providing "all annual salaries shall be paid in twelve (12) equal monthly installments except as otherwise herein provided," nor any other rider to S. B. 402, Acts 1941, 47th Leg., (Eleemosynary Institution Appropriation Bill) requires the expenditure of the lump sum appropriation for attendants, cooks, etc., in twelve equal amounts. Acts 1935, 44th Leg., H. B. 781; Acts 1937, 45th Leg., H. B. 140; Acts 1939, 46th Leg., H. B. 256.

INDEX

CONSTITUTION AND STATUTES CITED AND CONSTRUED

CONSTITUTION OF TEXAS

| Article | Section | Opinion No. | Page |
|--------------|------------|-------------|------|
| Article III | Section 18 | 0-3996 | 280 |
| | Section 51 | 0-3949 | 276 |
| Article V | Section 8 | 0-3912 | 271 |
| | Section 16 | 0-3912 | 271 |
| | | 0-3914 | 271 |
| | | 0-3912 | 271 |
| Article VIII | Section 22 | 0-3921 | 272 |
| | Section 1a | 0-3959 | 277 |
| | Section 2 | 0-3959 | 277 |
| | Section 6 | 0-3959 | 277 |
| | Section 9 | 0-3890 | 267 |
| Article XVI | Section 5 | 0-3974 | 279 |
| | | 0-3798 | 263 |
| | | 0-3926 | 273 |
| | Section 33 | 0-3966 | 278 |
| | Section 40 | 0-3940 | 275 |
| | Section 51 | 0-3921 | 272 |

REVISED CIVIL STATUTES AND VERNON'S ANNOTATED CIVIL STATUTES

| Article | Section | Opinion No. | Page |
|---------------|------------------------------|-------------|------|
| 166 | | 0-3911 | 271 |
| 167 | | 0-3911 | 271 |
| 192 b | Secs. 1, 4, 5, 6 | 0-3895 | 268 |
| 249a | Sec. 11 | 0-3392 | 260 |
| 334 | | 0-3967 | 278 |
| 362 | | 0-3928 | 273 |
| 363 | | 0-3928 | 273 |
| 670-673, inc. | | 0-3768 | 262 |
| 681 | | 0-3768 | 262 |
| 704 | | 0-3931 | 274 |
| 856 | | 0-3503 | 260 |
| 881a | | 0-3928 | 273 |
| 881a-24 | | 0-3503 | 260 |
| 881a-29 | | 0-3503 | 260 |
| 911a | | 0-3249 | 259 |
| 911b | | 0-3973 | 278 |
| 911b | Secs. 1 (g), 2, 3, 1 (h), 16 | 0-3964 | 277 |
| 911b | Sec. 4a | 0-3249 | 259 |
| 1048 | | 0-3904 | 270 |
| 1269h | Sec. 2 | 0-3931 | 274 |
| 1302 | Sec. 83 | 0-3897 | 268 |

| Article | Section | Opinion No. | Page |
|----------|--|-------------|------|
| 1315 (a) | | 0-3947 | 276 |
| 1315 (b) | | 0-3947 | 276 |
| 1524a | | 0-3928 | 273 |
| 1627 | | 0-3889 | 267 |
| 1628 | | 0-3889 | 267 |
| 1645 | | 0-3889 | 267 |
| 1678 | | 0-3890 | 267 |
| 1679 | | 0-3809 | 267 |
| 2323 | | 0-3900 | 269 |
| 2592 | | 0-3768 | 262 |
| 2593 | | 0-3768 | 262 |
| 2596 | | 0-3768 | 262 |
| 2613-9 | | 0-3768 | 262 |
| 2613a-1 | | 0-3768 | 262 |
| 2616 | | 0-3768 | 262 |
| 2620 | | 0-3768 | 262 |
| 2625 | | 0-3768 | 262 |
| 2628a-7 | | 0-3768 | 262 |
| 2628a-8 | | 0-3768 | 262 |
| 2628b | | 0-3768 | 262 |
| 2647a | Sec. 1 | 0-3768 | 262 |
| 2675b-5 | | 0-3939 | 275 |
| 2681 | | 0-3610 | 261 |
| 2742i | | 0-3610 | 261 |
| 2763 | | 0-3869 | 265 |
| 2773 | | 0-3965 | 277 |
| 2775 | | 0-3966 | 278 |
| 2777 | | 0-3966 | 278 |
| 2791 | | 0-3904 | 270 |
| 2792 | | 0-3869 | 265 |
| 2815g-25 | | 0-3610 | 261 |
| 2824 | | 0-3959 | 277 |
| 2846 | | 0-3939 | 275 |
| 2847 | | 0-3939 | 275 |
| 2852 | | 0-3939 | 275 |
| 2853 | | 0-3939 | 275 |
| 2922-1 | | 0-3512 | 261 |
| 2922-1 | Secs. 2, 7 (1), 7 (3), 8-1 (a), 8-1 (b), 8-1 (c), 8-8 (1) (d), 11 | 0-3903 | 269 |
| 2922-1 | Secs. 3 (1), 3 (2), 3 (5), 4 (1), 4 (2), 4 (3) | 0-3917 | 272 |
| 2922-1 | Sec. 6, Subsec. 8 | 0-3996 | 280 |
| 2938 | | 0-3931 | 274 |
| 3194 | | 0-3919 | 272 |
| 3271a | Sec. 1 | 0-3392 | 260 |
| 3883 | | 0-3896 | 268 |
| 3891 | | 0-3864 | 265 |
| | | 0-3896 | 268 |
| 3895 | | 0-3896 | 268 |
| 3896 | | 0-3896 | 268 |
| 3897 | | 0-3864 | 265 |
| | | 0-3896 | 268 |

| Article | Section | Opinion No. | Page |
|--------------------------------|---------------------|-------------|------|
| 3899 | | 0-3864 | 265 |
| | | 0-3892 | 267 |
| | | 0-3896 | 268 |
| | | 0-3968 | 278 |
| | | 0-3976 | 279 |
| 3899b | Sec. 2 | 0-3899 | 268 |
| 3902 | | 0-3864 | 265 |
| | | 0-3925 | 273 |
| 3912e | Secs. 3, 4, 5 | 0-3976 | 279 |
| 4413 (1), (2), (4), (13), (15) | | 0-3100 | 259 |
| 4413 (2) | | 0-3998 | 280 |
| 4477 | Rules 34a-55a, inc. | 0-3775 | 263 |
| 4477 | Rule 36a | 0-3946 | 276 |
| 4574 | | 0-3838 | 264 |
| 4682 | Sec. 15 | 0-3987 | 279 |
| 4690c | | 0-3932 | 274 |
| 4725 | Sec. 3 | 0-3503 | 260 |
| 4739 | | 0-3855 | 264 |
| 4769 | | 0-3503 | 260 |
| 4993 | | 0-3855 | 264 |
| 5068a | | 0-3910 | 271 |
| 5221c | Secs. 6, 16 | 0-3906 | 270 |
| 5221b-9 | | 0-3737 | 261 |
| 5247 | | 0-3902 | 269 |
| 5283-5298 | | 0-3940 | 275 |
| 5299 | | 0-3940 | 275 |
| 5561 | | 0-3919 | 272 |
| 5578-5611, inc. | | 0-3947 | 276 |
| 5891a | | 0-3902 | 269 |
| 6663 | | 0-3852 | 264 |
| 6674k | | 0-3852 | 264 |
| 6820 | | 0-3899 | 268 |
| 6869 | | 0-3925 | 273 |
| 7047b | | 0-3909 | 270 |
| 7047e | | 0-3893 | 267 |
| | | 0-4009 | 280 |
| | | 0-4017 | 281 |
| 7060 | | 0-3922 | 273 |
| 7064 | | 0-3503 | 260 |
| 7065a-7 | | 0-3782 | 263 |
| 7070 | Sec. 2 | 0-3922 | 273 |
| 7119 | | 0-3840 | 264 |
| 7121 | | 0-3840 | 264 |
| 7122 | | 0-3840 | 264 |
| 7125 | | 0-3753 | 262 |
| 7177 | | 0-3753 | 262 |
| 7336 | | 0-3631 | 261 |
| 7336f | | 0-3942 | 275 |
| 7340 | | 0-3631 | 261 |
| 7345b | | 0-3886 | 266 |
| 7345b | Sec. 2, 10 | 0-3631 | 261 |
| 7880, Subdiv. 90a | | 0-3954 | 277 |

PENAL CODE

| Article | Opinion No. | Page |
|------------------|-------------|------|
| 1 | 0-3249 | 259 |
| 3 | 0-3249 | 259 |
| 13 | 0-3912 | 271 |
| | 0-3914 | 271 |
| 15 | 0-3912 | 271 |
| 423 | 0-3914 | 271 |
| 432 | 0-3996 | 280 |
| 433 | 0-3996 | 280 |
| 802 | 0-3878 | 266 |
| | 0-3912 | 271 |
| | 0-3914 | 271 |
| 802b | 0-3912 | 271 |
| 827b, Secs. 4, 5 | 0-3901 | 269 |
| 1690a | 0-3249 | 259 |
| 1690b | 0-3249 | 259 |

CODE OF CRIMINAL PROCEDURE

| Article | Opinion No. | Page |
|-------------|-------------|------|
| 56 | 0-3914 | 271 |
| 119 | 0-3798 | 263 |
| 667, Sec. 3 | 0-3902 | 269 |
| 698 | 0-3878 | 266 |
| 826 | 0-3878 | 266 |
| 850 | 0-3878 | 266 |
| 851 | 0-3878 | 266 |
| 968, Sec. 2 | 0-3875 | 265 |
| 1020 | 0-3864 | 265 |
| | 0-3976 | 279 |
| 1030 | 0-3976 | 279 |
| 1055 | 0-1578-A | 259 |
| | 0-3976 | 279 |
| 1065 | 0-3919 | 272 |
| | 0-3976 | 279 |

SESSION LAWS CITED AND CONSTRUED

| | Opinion No. | Page |
|---|-------------|------|
| Acts 1909, 31st Leg., ch. 8 | 0-3904 | 270 |
| S. B. 291, Sec. 10 | 0-3503 | 260 |
| Acts 1915, 34th Leg., ch. 63, p. 209 | 0-3965 | 277 |
| ch. 117, p. 175 | 0-3890 | 267 |
| Acts 1925, 39th Leg., ch. 13 | 0-3947 | 276 |
| Acts 1927, 40th Leg., 1st C. S., p. 306 | 0-3920 | 272 |

| | Opinion No. | Page |
|--|-------------|------|
| Acts 1929, 41st Leg., S. B. 46 | 0-3920 | 272 |
| R. S., H. B. 12 | 0-3753 | 262 |
| 2nd C. S., ch. 10, Sec. 5 | 0-3939 | 275 |
| S. B. 111, Sec. 25 | 0-3503 | 260 |
| Acts 1931, 42nd Leg., R. S., p. 730 | 0-3920 | 272 |
| S. B. 218 | 0-3503 | 260 |
| H. B. 335 | 0-3249 | 259 |
| H. B. 427 | 0-3951 | 276 |
| Acts 1933, 43rd Leg., R. S., p. 510 | 0-3920 | 272 |
| Acts 1935, 44th Leg., H. B. 781 | 0-4024 | 281 |
| Acts 1937, 45th Leg., R. S., p. 1489 | 0-3920 | 272 |
| H. B. 73 | 0-3912 | 271 |
| H. B. 140 | 0-4024 | 281 |
| Acts 1939, 46th Leg., S. B. 13 | 0-3503 | 260 |
| S. B. 427 | 0-3920 | 272 |
| H. B. 256 | 0-4024 | 281 |
| H. B. 614 | 0-3775 | 263 |
| Acts 1941, 47th Leg., R. S., S. B. 119 | 0-3889 | 267 |
| S. B. 163, Sec. 3 | 0-3898 | 268 |
| S. B. 351 | 0-3940 | 275 |
| S. B. 402 | 0-4024 | 281 |
| S. B. 423 | 0-3838 | 264 |
| | 0-3879 | 266 |
| | 0-3928 | 273 |
| S. B. 423, Item 106, p. 1231 | 0-3100 | 259 |
| S. B. 423, Subsec. 12 (g) | 0-3998 | 280 |
| S. B. 423, Subsec. 13 (f) | 0-3998 | 280 |
| H. B. 8, Art. II | 0-3909 | 270 |
| H. B. 8, Arts. IV, V | 0-3922 | 273 |
| H. B. 8, Art. XV | 0-3765 | 262 |
| H. B. 8, Art. XVII, Sec. 25 | 0-3935 | 274 |
| H. B. 16 | 0-3897 | 268 |
| H. B. 20, Sec. 24 | 0-3878 | 266 |
| H. B. 45, Sec. 4 | 0-3891 | 267 |
| H. B. 73 | 0-3878 | 266 |
| H. B. 73 | 0-3912 | 271 |
| H. B. 73, Sec. 1 | 0-3914 | 271 |
| H. B. 186, Sec. 5 | 0-3873 | 265 |
| H. B. 272 | 0-3920 | 272 |
| H. B. 364 | 0-3345 | 260 |
| H. B. 423, Sec. 2 | 0-3737 | 261 |
| H. B. 499 | 0-3737 | 261 |
| H. B. 611 | 0-3879 | 266 |
| H. B. 624 | 0-3775 | 263 |
| H. B. 765 | 0-3951 | 276 |
| H. B. 821 | 0-3775 | 263 |
| | 0-3946 | 276 |
| H. B. 845 | 0-3082 | 259 |
| H. B. 845 | 0-3928 | 273 |
| H. B. 924 | 0-3775 | 263 |
| H. B. 990 | 0-3753 | 262 |

FEDERAL CONSTITUTION

FEDERAL STATUTES

| | Opinion No. | Page |
|--------------------------------------|-------------|------|
| 42 U. S. C. A. Sec. 502 (a), 503 (a) | 0-3737 | 261 |
| 49 U. S. C. A. 301 | 0-3973 | 278 |
| 49 U. S. C. A. 308 | 0-3973 | 278 |

OPINIONS MODIFIED

| | Opinion No. | Page |
|-------------------------------------|-------------|------|
| Conference Opinion 2218 modified by | 0-3869 | 265 |

SUBJECT INDEX

| | A | Opinion No. | Page |
|---|---|-------------|------|
| Advertising | | | |
| Partnership composed of architect and engineer, advertising of firm as "Architects and Engineers," legality of | | 0-3392 | 260 |
| Aliens | | | |
| Property within incorporated city, acquisition of by, legality of | | 0-3911 | 271 |
| APPROPRIATIONS | | | |
| Departmental Appropriation Bill | | | |
| Department of Banking | | | |
| Lump sum appropriation, allocation of for salaries and expenses of supervision of building and loan association, loan and brokerage companies, and credit unions, authority for | | 0-3928 | 273 |
| Department of Public Safety | | | |
| Land, purchase of for erection of radio station with funds from, authority of in | | 0-3100 | 259 |
| Educational Appropriation Bill | | | |
| Full time positions listed in, conversion of into part-time positions, legality of | | 0-3920 | 272 |
| Eleemosynary Appropriation Bill | | | |
| Attendants, cooks, etc., for institutions, lump sum appropriation for, salaries of as payable in twelve equal amounts | | 0-4024 | 281 |
| Federal appropriations | | | |
| Department of Public Welfare, appropriation to by federal government, use of to increase salaries of employees of, authority for | | 0-3879 | 266 |
| Funds supplied by federal government, expenditure of as governed by rules of Social Security Board | | 0-3737 | 261 |
| Junior College Appropriation Bill | | | |
| Benefits under the Act, colleges eligible for | | 0-3898 | 268 |
| Motor Fuel Tax Administration Fund, balance in, Act appropriating to Comptroller's Department, validity of | | 0-3935 | 274 |
| Architects | | | |
| Advertising | | | |
| Partnership composed of architect and engineer, advertising of firm as "Architects and Engineers," legality of | | 0-3392 | 260 |

| | B | Opinion No. | Page |
|--|---|-------------|------|
| BANKS AND BANKING | | | |
| Department of Banking | | | |
| Credit union examination fees, collection and disposition of by | | 0-3082 | 259 |
| Lump sum appropriation, allocation of for salaries and expenses of supervision of building and loan association, loan and brokerage companies, credit unions, authority for | | 0-3928 | 273 |
| BONDS | | | |
| Federal Bonds | | | |
| U. S. Defense Bonds, investment of county permanent school fund in, authority of commissioners' court in | | 0-3959 | 277 |
| Water control and improvement districts bonds | | | |
| Revenue bonds issued by water control and improvement district, liability of property of subscriber for payment of | | 0-3954 | 277 |
| Revenue bonds issued by water control and improvement district, relief of holders of from inadequate servicing | | 0-3954 | 277 |
| C | | | |
| CARRIERS | | | |
| Motor carriers | | | |
| Common carriers and contract carriers, definitions of, conditions and laws governing, and certificates and permits required of | | 0-3964 | 277 |
| Interstate certificates, holders of, issuance of certificate for use of State highways to operating over irregular routes and schedules, authority of Railroad Commission in | | 0-3973 | 278 |
| Violation of rate fixing order of Railroad Commission by, criminal prosecution for, authority for | | 0-3249 | 259 |
| CITIES, TOWNS, AND VILLAGES | | | |
| City of Brownsville | | | |
| Conveyance of property to by Brownsville Independent School District, authority for | | 0-3965 | 277 |
| Property in, acquisition of by aliens, legality of | | 0-3911 | 271 |
| CLAIMS | | | |
| Court reporter in State case | | | |
| Warrant, authority of Comptroller to issue to under certain submitted facts | | 0-3926 | 273 |
| Teacher Retirement System | | | |
| Warrant refunding payment made in error, issuance of upon order of Trustees of, authority of Comptroller in | | 0-3903 | 269 |

| | Opinion No. | Page |
|---|-------------|------|
| COLLEGES AND UNIVERSITIES | | |
| Appropriation | | |
| Full time positions listed in, conversion of into part-time positions, legality of | 0-3920 | 272 |
| Buildings, construction of, necessity of approval of plans and letting of contracts by Board of Control in | 0-3768 | 262 |
| Junior colleges | | |
| Appropriation to, colleges eligible for benefits under Act providing for | 0-3898 | 268 |
| Texas Technological College | | |
| Land, sale or lease of, authority of Legislature in | 0-3982 | 279 |
| Teachers, payment of salary of for services not rendered, legality of | 0-3949 | 276 |
| COMMISSIONERS' COURT | | |
| Constable on fee basis, traveling expenses of, approval of by | 0-3892 | 267 |
| Deputy sheriffs, appointment of by sheriff in salary county, number that may be appointed under what conditions | 0-3925 | 273 |
| Funds | | |
| Texas Defense Guard, appropriation by for use and benefit of, legality of | 0-3891 | 267 |
| Supplies and expenses | | |
| Telephones for resident district judges, payment of rentals on and long distance calls by, authority for | 0-3899 | 268 |
| Typewriters and permanent record books, payment for with courthouse and jail fund, authority of in | 0-3974 | 279 |
| U. S. Defense Bonds, investment of county permanent school fund in, authority of in | 0-3959 | 277 |
| Wolf trappers, payment of salaries of from general fund by, authority for | 0-3895 | 268 |
| CONSTITUTIONAL LAW | | |
| Alienation of property | | |
| Property within incorporated cities and towns, acquisition of by aliens, legality of | 0-3911 | 271 |
| Grant of public moneys to individuals | | |
| Payment of salary of State college professor for services not rendered as being within prohibition against | 0-3949 | 276 |
| Local or special laws | | |
| Scholastic population, Act having as basis for fixing compensation of county superintendents with proviso further classifying certain counties as being | 0-3879 | 266 |
| Office or place created by Legislature | | |
| Appointment of member of Legislature to, legality of | 0-3996 | 280 |

| | Opinion No. | Page |
|--|-------------|------|
| Taxation | | |
| Oil and gas | | |
| Natural gas, tax on production of, taxability of gas produced out of State under | 0-3909 | 270 |
| CONTRACTS | | |
| State contracts | | |
| Board of Education contracts | | |
| Textbook contracts, assignability of by publisher | 0-3939 | 275 |
| Highway construction contracts | | |
| Paint purchased by State, authority of Highway Commission to require contractors to use and deduct from contract price | 0-3852 | 264 |
| CONVEYANCES | | |
| Homestead | | |
| Conveyance of husband's interest in to wife who assumes pre-existing indebtedness against due to exempt agency as subject to stamp tax | 0-4009 | 280 |
| School property | | |
| Independent school districts | | |
| Limitations on conveyances of by | 0-3965 | 277 |
| Convicts | | |
| Prisoner, arrest and return of released from penitentiary on void order of district court | 0-3798 | 263 |
| COUNTIES | | |
| County of Rusk | | |
| Hurricane Petroleum Corporation in receivership, levy on property of by for taxes, authority for | 0-3782 | 263 |
| County of Wilbarger | | |
| Deputy sheriffs, number that may be appointed by Sheriff of under what conditions | 0-3925 | 273 |
| Fee basis counties | | |
| Compensation of officers | | |
| Ex-officio compensation, consideration of in arriving at maximum annual compensation of as proper | 0-3896 | 268 |
| Public free libraries | | |
| "Bookmobile" library, establishment and operation of with money from Permanent Improvement Fund, authority for | 0-3890 | 267 |
| COURTS | | |
| District Court | | |
| Void orders | | |
| Prisoner released from penitentiary on void order of, status of | 0-3798 | 263 |
| Receivership | | |
| Receivers of insurance companies, removal of, procedure to be followed in, and appointment of statutory liquidator as being discretionary with | 0-3910 | 271 |

| | Opinion No. | Page |
|---|-------------|------|
| CORPORATIONS | | |
| Charter | | |
| Extension of by Secretary of State where approval of non-existent State officer is required by statute Purpose clause | 0-3947 | 276 |
| Issuance of memberships by corporation in manner inconsistent with as ultra vires | 0-3897 | 268 |
| Hurricane Petroleum Corporation | | |
| Levy on property of in receivership for taxes by Rusk County, authority for | 0-3782 | 263 |
| CRIMINAL LAW | | |
| Driving while intoxicated | | |
| Election of accused to be tried under old law, effect of where offense was committed prior to June 17, 1941 | 0-3914 | 271 |
| Offense committed prior to June 17, 1941, trial of in district court as felony where accused has been convicted for same offense prior to June 17, 1941 | 0-3912 | 271 |
| Suspension of license, effect of deferred judgment on | 0-3878 | 266 |
| Violations of rules promulgated by governmental agency, criminal prosecution for, legality of | 0-3249 | 259 |
| D | | |
| E | | |
| ELECTIONS | | |
| Bond elections | | |
| Airport bonds, election for voting on issuance of by county as being special election | 0-3931 | 274 |
| Judges and clerks | | |
| Compensation of in airport bond election as fixed by special election statute | 0-3931 | 274 |
| Special elections | | |
| Airport bonds, election for voting on issuance of by county as being | 0-3931 | 274 |
| School election | | |
| Transfer of child to another school district as affecting parents' rights to vote in district of residence | 0-3929 | 274 |
| ELEEMOSYNARY INSTITUTIONS | | |
| Appropriation | | |
| Attendants, cooks, etc., lump sum appropriation for, salaries of as payable in twelve equal amounts | 0-4024 | 281 |
| Engineers | | |
| Advertising | | |
| Partnership composed of architect and engineer, advertising of firm as "Architects and Engineers," legality of | 0-3392 | 260 |

| | Opinion No. | Page |
|--|-------------|------|
| County surveyor | | |
| Person holding office of, qualification necessary for | 0-3940 | 275 |
| Estates of Decedents | | |
| Taxation | | |
| Residue of estate left to American Red Cross as subject to inheritance tax | 0-3840 | 264 |
| F | | |
| FEES, SALARIES AND COMMISSIONS | | |
| Compensation of deputy court reporter, determination of time for computing as being within discretion of court | 0-3900 | 269 |
| Credit union examination fees, collection and dispo- sition of by Banking Commission | 0-3082 | 259 |
| Examining trial fees to county attorney, warrant for payment of as payable to county attorney even though services are rendered by assistant | 0-3864 | 265 |
| Ex-officio compensation of officers on fee basis, con- sideration of in arriving at maximum annual compensation of as proper | 0-3896 | 268 |
| Half fees to constable when prisoner is removed from jail because of sickness before sentence is satisfied, liability of county for | 0-1578-A | 159 |
| Lunacy proceeding fees to sheriff, amount payable by whom | 0-3919 | 272 |
| Salary of attendants, cooks, etc., of eleemosynary institutions as payable in twelve equal amounts | 0-4024 | 281 |
| Salary of assistant county superintendent, amount payable as affected by number employed | 0-3345 | 260 |
| Salary of county auditor as limited to payment from general fund | 0-3889 | 267 |
| Salary of county school superintendent, Act fixing, constitutionality of | 0-3345 | 260 |
| Salary of district attorney while serving in National Guard, payment of in excess of twelve days, authority for | 0-3951 | 276 |
| G | | |
| Game, Fish, and Birds | | |
| Bird sanctuary, Act establishing as precluding shooting of all migratory birds or only white-winged doves and chachalacas | 0-3873 | 265 |
| H | | |
| HOMESTEADS | | |
| Conveyance of husband's interest in to wife who assumes pre-existing indebtedness against due to exempt agency as subject to stamp tax | 0-4009 | 280 |

| | Opinion No. | Page |
|---|-------------|------|
| County line, homestead situated on as exempt in both counties | 0-3921 | 272 |

I

Inquest

| | | |
|---|--------|-----|
| Justice of the peace, holding of by even though person dies in presence of witnesses, authority for | 0-3875 | 265 |
|---|--------|-----|

INSURANCE

| | | |
|---|--------|-----|
| Companies in receivership, receivers of, method of removal of and discretion of court in appointing another | 0-3910 | 271 |
|---|--------|-----|

| | | |
|--|--------|-----|
| Letters by private parties to Board of Insurance Commissioners, copying of by agents of companies, authority for | 0-3987 | 279 |
|--|--------|-----|

Life insurance

| | | |
|--|--------|-----|
| Investments by in share or share accounts of building and loan associations, statutes regulating | 0-3503 | 260 |
|--|--------|-----|

| | | |
|--|--------|-----|
| Securities, additional deposit of with State Treasurer not exceeding amount of capital stock, acceptance by Treasurer of | 0-3855 | 264 |
|--|--------|-----|

Intoxicating Liquors

| | | |
|---|--------|-----|
| Beer, sale of by Texas Defense Guard unit, necessity of license for | 0-3902 | 269 |
|---|--------|-----|

J

JUDGMENTS

Deferred judgments

| | | |
|---|--------|-----|
| Driving while intoxicated, conviction of, effect of deferred judgment on suspension of driver's license | 0-3878 | 266 |
|---|--------|-----|

Tax judgments

| | | |
|--|--------|-----|
| Foreclosure suit, land purchased by taxing unit in, sale of at less than adjudged value of amount of judgment awarded, authority for | 0-3886 | 266 |
|--|--------|-----|

K

L

LICENSES AND CERTIFICATES

Carriers' permits and certificates

| | | |
|--|--------|-----|
| Common carriers and contract carriers, definition of and conditions governing obtaining of | 0-3964 | 277 |
|--|--------|-----|

Driver's licenses

| | | |
|---|--------|-----|
| Suspension of for conviction of driving while intoxicated, effect of deferred judgment on | 0-3878 | 266 |
|---|--------|-----|

| | Opinion No. | Page |
|--|-------------|------|
| Motor vehicle licenses | | |
| "Non-residents," meaning of term for purposes of requiring | 0-3901 | 269 |
| Temporary registration certificate, number of days in calendar year non-resident may operate in Texas under | 0-3901 | 269 |
| Surveyor's license | | |
| County surveyor as required to obtain | 0-3940 | 275 |
| Legislature | | |
| Land of state colleges or universities, sale or lease of, authorization of by | 0-3982 | 279 |
| Libraries | | |
| Public free libraries | | |
| "Bookmobile" library, establishment and operation with money from Permanent Improvement Fund, authority for | 0-3890 | 267 |
| Liens | | |
| Supplemental indenture which creates no lien interest as subject to stamp tax | 0-4017 | 280 |
| Lunacy | | |
| Sheriff's fees and expenses in lunacy proceedings, amount payable by whom | 0-3919 | 272 |
| M | | |
| Mortgages | | |
| Stamp tax, mortgage executed in favor of Oklahoma Land Office acting in capacity of mortgage company, taxability of under | 0-3898 | 268 |
| Motor Vehicles | | |
| Registration | | |
| Temporary registration certificate, number of days in calendar year non-resident may operate in Texas under | 0-3901 | 269 |
| N | | |
| NEPOTISM AND RELATED OFFENSES | | |
| Husband of first cousin of member of Teacher Retirement Board, employment of as Executive Secretary of Retirement System, legality of | 0-3996 | 280 |
| O | | |
| OIL AND GAS | | |
| Rentals paid into the general fund in excess, refunding of by Land Commissioner deducting same from royalties due the State, legality of | 0-3943 | 275 |

| | Opinion No. | Page |
|--|-------------|------|
| Taxation | | |
| Natural gas, tax on production of, taxability of gas produced out of state under | 0-3909 | 270 |
| P | | |
| Public Lands | | |
| Delinquent tax foreclosure, property purchased by taxing unit in, conditions governing sale of at less than adjudged value or total judgment awarded | 0-3886 | 266 |
| PUBLIC MONEYS | | |
| Expenses | | |
| Meals and lodging of members of Public Safety Commission, effect of rider in appropriation bill as limiting to \$4 per day | 0-3998 | 280 |
| Telephone calls (long distance), by resident district judge, payment of by commissioners' court, authority for | 0-3899 | 268 |
| Traveling expenses | | |
| Automobile owned by member of State board, reimbursement of for use of on mileage basis, legality of | 0-3838 | 264 |
| Constable on fee basis, mileage allowance to, approval of by commissioners' court | 0-3892 | 267 |
| Mileage in misdemeanor and felony cases, collection and payment of to constables on fee basis | 0-3976 | 279 |
| Mileage, payment and disposition of to sheriff on a salary basis | 0-3976 | 279 |
| Mileage, payment of incurred by tax assessor-collector on trips to Austin and in collecting bad checks, legality of | 0-3968 | 278 |
| Public Safety Commission, members of, reimbursement of as limited to actual expenses incurred | 0-3998 | 280 |
| Sheriff conveying lunatics to State Asylum, payment of as limited to actual expenses | 0-3919 | 272 |
| Funds | | |
| County funds | | |
| Courthouse and jail fund, payment for typewriters and permanent record books from commissioners' court's authority in | 0-3974 | 279 |
| General fund | | |
| County auditor, salary of as limited to payment from | 0-3889 | 267 |
| Wolf trappers, payment of salaries of by commissioners' court from, authority for | 0-3895 | 268 |
| Permanent improvement fund | | |
| Library, "bookmobile," establishment and operation of with money from, authority for | 0-3890 | 267 |

| | Opinion No. | Page |
|--|-------------|------|
| Federal funds allocated to Department of Public Welfare for administrative purposes, use of in supplementing salaries of personnel | 0-3879 | 266 |
| School funds | | |
| Permanent school fund | | |
| Investment of in U. S. Defense Bonds, authority of commissioners' court in | 0-3959 | 277 |
| State funds | | |
| Motor fuel tax administration fund, balance in, act appropriating, to Comptroller department in contravention with general statute, validity of | 0-3935 | 274 |
| Unemployment compensation funds, supplies and equipment purchased with federal funds, expenditure of as governed by rules of Social Security Board | 0-3737 | 261 |
| PUBLIC OFFICERS | | |
| Assistants and deputies | | |
| County school superintendent, assistants to, salaries of as affected by number employed | 0-3345 | 260 |
| Court reporter deputy, establishment of time served for computing compensation of, discretion of court in | 0-3900 | 269 |
| Compensation of on fee basis, consideration of ex-officio compensation of in arriving at maximum annual compensation of as proper | 0-3896 | 268 |
| County attorney | | |
| Examining trial fees to, warrant in payment of as payable to county attorney even though services are rendered by assistant | 0-3864 | 265 |
| Official duties of, school consolidation election services as coming within | 0-3967 | 278 |
| Services in connection with school districts consolidation election, performance of, district contracting with for, legality of | 0-3967 | 278 |
| Trustee of certain independent school district, person serving as county attorney and, legality of | 0-3966 | 278 |
| County auditor | | |
| Salary of as limited to payment from general fund | 0-3889 | 267 |
| Warrants drawn on funds appropriated to Texas Defense Guard by commissioners' court, authority of to sign | 0-3891 | 267 |
| County clerk | | |
| Birth and death certificates filed with, method of filing of with State Registrar | 0-3775 | 263 |
| County school superintendent | | |
| Assistants and deputies | | |
| Salaries of, limitations on amounts payable to as affected by number employed | 0-3345 | 260 |

| | Opinion No. | Page |
|--|-------------|------|
| Traveling expenses | | |
| Transportation expenses incurred in going from home to office to do overtime work, consideration of as | 0-3345 | 260 |
| Salary of, Act fixing, constitutionality | 0-3345 | 260 |
| County surveyor | | |
| Person holding office of, qualification necessary for | 0-3940 | 275 |
| County tax assessor-collector | | |
| Delinquent tax record, compilation of four year supplement to, liability of State for proportionate cost of | 0-3942 | 275 |
| Mileage, payment of incurred by on trips to Austin and in collecting bad checks, legality of | 0-3968 | 278 |
| Sale of land purchased by taxing units, authority of to give consent in behalf of State in | 0-3886 | 266 |
| District attorney | | |
| Salary of while serving in National Guard, payment of in excess of twelve days, authority for | 0-3951 | 276 |
| District judge | | |
| Telephone calls (long distance), payment of by commissioners' court, authority for | 0-3899 | 268 |
| Incompatible offices | | |
| County attorney and trustee of independent school district as being | 0-3966 | 278 |
| Justice of the peace | | |
| Births and deaths, registration of by in incorporated cities having 2,500 or more inhabitants | 0-3946 | 276 |
| Inquest, holding of by even though person dies in presence of witnesses; authority for | 0-3875 | 265 |
| Public Records | | |
| Board of Insurance Commissioners | | |
| Letters by private parties concerning insurance companies, permission to agents of companies to copy, authority of in granting | 0-3987 | 279 |

Q

R

Recordation and Registration

Motor vehicle registration

| | | |
|---|--------|-----|
| Temporary registration certificate, number of days in calendar year non-resident may operate in Texas under | 0-3901 | 269 |
|---|--------|-----|

S

SCHOOLS AND SCHOOL DISTRICTS

Common school districts

| | | |
|---|--------|-----|
| Boundary lines, unrecorded order of county board of trustees changing, subsequent changes made upon authority of, validity of | 0-3610 | 261 |
|---|--------|-----|

| | Opinion No. | Page |
|--|-------------|------|
| Consolidation and consolidated school districts | | |
| Consolidation elections, services in connection with, duties of county attorney pertaining to | 0-3967 | 278 |
| Consolidation elections, services in connection with, trustees authority in contracting with county attorney for | 0-3967 | 278 |
| Elections | | |
| Voters | | |
| Transfer of child to another district as affecting parents' rights to vote in district of residence | 0-3929 | 274 |
| Independent school districts | | |
| Board of equalization of, number of members who may serve on where district has own tax assessor-collector | 0-3904 | 270 |
| City controlled school district | | |
| Gas, light, water, and power distributors, gross receipts tax on, eligibility of independent school districts to participate in | 0-3922 | 273 |
| Conveyance of school property by, limitations on | 0-3965 | 277 |
| Taxation | | |
| County assessing and collecting, placing of higher valuation on property for school purposes than for State and county by, legality of | 0-3869 | 265 |
| Small independent districts having less than 150 scholastics, assessing and collecting taxes of as being governed by laws relating to other independent school districts | 0-3869 | 265 |
| Trustee, person serving as while serving as county attorney, legality of | 0-3966 | 278 |
| Teachers | | |
| Reserve teachers, status of for purposes of participation in Teacher Retirement System | 0-3512 | 261 |
| Retirement, credit for prior service, authority of Retirement System to set minimum time that must have been served in 1937-38 for establishment of | 0-3917 | 271 |
| Securities | | |
| Life insurance companies | | |
| Building and loan associations, share or share accounts of, investment in by life insurance companies, statutes governing | 0-3503 | 260 |
| SHERIFFS AND CONSTABLES | | |
| Constable | | |
| Half fees to when defendant is removed from jail because of sickness before sentence is satisfied, liability of county for | 0-1578-A | 259 |
| Mileage fees in misdemeanor and felony cases, collection and payment of to constables on fee basis, manner of | 0-3976 | 279 |
| Traveling expenses of on fee basis, approval of payment of by commissioners' court | 0-3892 | 267 |

| | Opinion No. | Page |
|---|-------------|------|
| Deputies | | |
| Appointment of by sheriff in salary county, number of deputies that may be appointed under what conditions | 0-3925 | 273 |
| Sheriffs | | |
| Lunacy proceedings | | |
| Fees to sheriff in, amount payable by whom | 0-3919 | 272 |
| Mileage fees, payment and disposition of to sheriff on salary basis, manner of | 0-3976 | 279 |
| State | | |
| Texas Defense Guards | | |
| Beer, sale of by, necessity of license for | 0-3902 | 269 |
| STATE DEPARTMENTS AND BOARDS | | |
| Adjutant General's Department | | |
| Texas Defense Guard | | |
| Beer, sale of by, necessity of license for | 0-3902 | 269 |
| Board of Control | | |
| Eleemosynary Division | | |
| Attendants, cooks, etc., of institutions, salaries of as payable in twelve equal amounts | 0-4024 | 281 |
| Public Buildings and Grounds Division | | |
| Buildings for higher educational institutions, construction of, necessity of approval of plans and letting of contracts by | 0-3768 | 262 |
| Board of Chiropody Examiners | | |
| Members of, per diem compensation and expenses of, inclusion of time spent traveling to and from board meetings in computing, legality of | 0-3838 | 264 |
| Members of, personal cars used in attending Board meetings, reimbursement of on reasonable mileage allowance, authority for | 0-3838 | 264 |
| Board of Education | | |
| Textbook contracts, assignment of, approval of, authority of in | 0-3939 | 275 |
| Board of Health | | |
| Bureau of Vital Statistics | | |
| Birth and death certificates filed with county clerk, authority of State Registrar to request or accept for filing | 0-3775 | 263 |
| Births and deaths | | |
| Local registrar, justice of the peace acting as in incorporated cities having 2,500 or more inhabitants, authority for | 0-3946 | 276 |
| Board of Insurance Commissioners | | |
| Deposition, authority of Board to authorize examiners to give, and remedy if examiner refuses | 0-3932 | 274 |
| Letters by private parties concerning insurance companies, permission to agents of companies to copy, authority of in granting | 0-3987 | 279 |

| | Opinion No. | Page |
|--|-------------|------|
| Life Insurance Division | | |
| Building and loan associations, share or share accounts of, investment by life insurance companies in, statutes governing | 0-3503 | 260 |
| Receivership, insurance companies in, method of removal of receiver and appointment of statutory liquidator | 0-3910 | 271 |
| Board of Registration for Professional Engineers | | |
| Partnership composed of architect and engineer, advertising of firm as "Architects and Engineers," legality of | 0-3392 | 260 |
| Bureau of Labor Statistics | | |
| Boiler Inspection Laws, rules and regulations, amendment and adoption of by, procedure to be followed in | 0-3906 | 270 |
| Comptroller of Public Accounts | | |
| Credit union examination fees in excess of examiners compensation and expenses, depositing and disbursing of as other state moneys by Banking Commissioner | 0-3082 | 259 |
| Delinquent tax record, compilation of four year supplement to, liability of State for proportionate cost of | 0-3942 | 275 |
| Inheritance Tax Division | | |
| Property previously inherited and taxed, deduction of as contained in estate of decedent in computing | 0-3753 | 262 |
| Residue of estate left to American Red Cross, taxability of | 0-3840 | 264 |
| Motor Fuel Tax Division | | |
| Motor fuel tax administration fund, act appropriating balance in to, validity of | 0-3935 | 274 |
| Omnibus tax | | |
| Natural gas production tax, See TAXES AND TAXATION, Omnibus tax | | |
| Warrants | | |
| Examining trial fees as payable to county attorney even though services are rendered by assistant | 0-3864 | 265 |
| Issuance of by to court reporter under certain facts | 0-3926 | 273 |
| Refunding payment made in error, issuance of upon order of Trustees of Teacher Retirement System, authority of in | 0-3903 | 269 |
| Salary of district attorney while serving in National Guard, payment in excess of twelve days, authority for | 0-3951 | 276 |
| Department of Agriculture | | |
| Commissioner of Markets and Warehouses, duties of office of as assumed by | 0-3947 | 276 |

| | Opinion No. | Page |
|---|-------------|------|
| Department of Banking | | |
| Banking Commission | | |
| Credit union examination fees, collection and disposition of by | 0-3082 | 259 |
| Lump sum appropriation, allocation of for salaries and expenses of supervision of building and loan association, loan and brokerage companies, and credit unions, authority for | 0-3928 | 273 |
| Department of Education | | |
| Junior colleges, appropriation to, colleges eligible for benefits under Act providing for | 0-3898 | 268 |
| Property belonging to independent school district, conveyance of, limitations on | 0-3965 | 277 |
| Department of Public Safety | | |
| Headquarters Division | | |
| Communications Bureau | | |
| Radio station, land for erection of, purchase of with funds from departmental appropriation, authority for | 0-3100 | 259 |
| Public Safety Commission | | |
| Meals and lodging of members of, effect of rider in appropriation bill as limiting allowance for | 0-3998 | 280 |
| Traveling expenses of members of, reimbursement of as limited to actual expenses | 0-3998 | 280 |
| Department of Public Welfare | | |
| Appropriation to by federal government, use of to increase salaries of employees of, authority for | 0-3879 | 266 |
| Game, Fish and Oyster Commission | | |
| Bird sanctuary, Act establishing as precluding shooting of all migratory birds or only white-winged doves and chachalacas | 0-3873 | 265 |
| General Land Office | | |
| Rentals paid into general fund in excess, refunding of by deducting same from royalties due the State, loyalty of | 0-3943 | 275 |
| Highway Department | | |
| Receiver of highway contractor, payment of money due to by Highway Department, status of attached liens after | 0-3877 | 266 |
| Supplies | | |
| Paint purchased by State for maintenance and construction work, authority of Commission to compel contractors to use and deduct from contract price | 0-3852 | 264 |
| Legislature | | |
| Members | | |
| Appointment of as Executive Secretary of Teacher Retirement System, legality of | 0-3996 | 280 |

| | Opinion No. | Page |
|---|-------------|------|
| Secretary of State | | |
| Corporations | | |
| Extension of charter of corporation organized under statute providing for approval of Commissioner of Markets and Warehouses, authority for | 0-3947 | 276 |
| Purpose clause, issuance of memberships by in manner inconsistent with as ultra vires | 0-3897 | 268 |
| Railroad Commission | | |
| Motor Transportation Division | | |
| Common carriers and contract carriers, definition of and conditions governing, obtaining of | 0-3964 | 277 |
| Motor carriers with interstate certificates, issuance of certificate for use of State highways to, operating over irregular routes and schedules, authority of in | 0-3973 | 278 |
| Rates Division | | |
| Violation of rate fixing order of Railroad Commission, criminal prosecution for, authority for | 0-3249 | 259 |
| Teacher Retirement System | | |
| Board of Trustees | | |
| Credit for prior service, authority to to set minimum time served by teacher in 1937-38 for establishment of | 0-3917 | 272 |
| Executive Secretary | | |
| Appointment of husband of first cousin of member of Retirement Board as, legality of | 0-3996 | 280 |
| Appointment of member of Legislature as, legality of | 0-3996 | 280 |
| Reserve teachers, status of for purposes of participation in | 0-3512 | 261 |
| Warrant refunding payment made in error, issuance of upon order of Trustees of, authority of Comptroller in | 0-3903 | 269 |
| Texas Prison System | | |
| Prisoner released on void order of district court, arrest and return of, authority for | 0-3798 | 263 |
| Treasury Department | | |
| Security deposits | | |
| Life insurance security deposits, additional securities tendered for deposit by insurance company not exceeding amount of capital stock, acceptance of by | 0-3855 | 264 |
| Unemployment Compensation Commission | | |
| Funds supplied by federal government, expenditure of as governed by rules of Social Security Board | 0-3737 | 261 |
| STATUTORY CONSTRUCTION | | |
| Conflicting statutes, construction of for reconciliation so statutes will stand | 0-3768 | 262 |
| Ejusdem generis, application of | 0-3873 | 265 |

| | Opinion No. | Page |
|---|-------------|------|
| General law, repeal or modification of by appropriation bill | 0-3935 | 274 |
| Statutes with two constructions, construction of for harmonious reading | 0-3935 | 274 |

T

TAXES AND TAXATION

| | | |
|--|--------|-----|
| Ad valorem taxes | | |
| Exemptions | | |
| Homestead situated in two counties, exemption of in both counties | 0-3921 | 272 |
| Delinquent taxes | | |
| Foreclosure suits | | |
| Land purchased by taxing unit in, sale of at less than adjudged value or total amount of judgment awarded, authority for | 0-3886 | 266 |
| Penalties and interest | | |
| Payment of from date of judgment to date of redemption by owner as necessary | 0-3631 | 261 |
| Record of, compilation of four year supplement to, liability of State for proportionate cost of | 0-3942 | 275 |
| Redemption of land sold for, amount to be paid by owner where all delinquent taxes are not asked for in suit | 0-3631 | 261 |
| Waiver of by taxing units where all delinquent taxes are not asked for in tax suit and property is subsequently redeemed | 0-3631 | 261 |
| Inheritance tax | | |
| Property previously inherited and taxed, deduction of as contained in estate of decedent in computing residue of estate left to American Red Cross with expenditure not limited to State of Texas, taxability of | 0-3753 | 262 |
| Residue of estate left to American Red Cross with expenditure not limited to State of Texas, taxability of | 0-3840 | 264 |
| Occupation tax | | |
| Natural gas production, tax on, | | |
| See Omnibus tax | | |
| Omnibus tax | | |
| Gas, light, water, and power distributors, gross receipts tax on, eligibility of independent school districts to participate in | 0-3922 | 273 |
| Natural gas production tax, taxability of gas produced out of state under | 0-3909 | 270 |
| Stock transfers, tax on | | |
| Voting trust certificates, original issuance and delivery of by voting trustee as subject to | 0-3765 | 262 |
| School taxes | | |
| Independent school taxes | | |
| Board of equalization of, number of members who may serve on where district has own tax assessor-collector | 0-3904 | 270 |

| | Opinion No. | Page |
|--|-------------|------|
| County assessing and collecting, placing of higher valuation on property for school purposes than for State or county by, legality of | 0-3869 | 265 |
| Small independent districts having less than 150 scholastic population, assessing and collecting taxes of as governed by laws relating to other independent school districts | 0-3869 | 265 |
| Stamp tax | | |
| Homestead, conveyance of husband's interest in to wife who assumes indebtedness against due to exempt agency as subject to | 0-4009 | 280 |
| Mortgage executed in favor of Oklahoma Land Office acting in capacity of mortgage company, taxability of under | 0-3893 | 267 |
| Pre-existing indebtedness assumed by grantee, calculation of amount of tax to be paid on | 0-4009 | 280 |
| Supplemental indenture which creates no lien interest as subject to | 0-4017 | 280 |
| TRIAL | | |
| Jurisdiction | | |
| Driving while intoxicated, election of accused to be tried under old law where offense was committed prior to June 17, 1941 | 0-3914 | 271 |
| Driving while intoxicated, trial of accused in district court as felon where offense was committed prior to June 17, 1941, and previous conviction for same offense has been had | 0-3912 | 271 |
| Receivership | | |
| Receivers of insurance companies, removal of, procedure to be followed in, and appointment of statutory liquidator as being discretionary with | 0-3910 | 271 |
| Witnesses | | |
| Deposition, Board of Insurance Commissioners' authorization of examiner to give, and remedy in event of refusal | 0-3932 | 274 |
| Trustees | | |
| Incompatible Offices | | |
| Independent school district trustee and county attorney as being | 0-3966 | 278 |
| U | | |
| UNITED STATES AND FEDERAL AGENCIES | | |
| District attorney serving in National Guard, salary of, payment of in excess of twelve days, authority for | 0-3951 | 276 |

| | Opinion No. | Page |
|---|-------------|------|
| Interstate Commerce Commission | | |
| Motor carriers with interstate certificates, issuance of certificate for use of State highways to, operating over irregular routes and schedules, authority of in | 0-3973 | 278 |
| University of Texas | | |
| Full-time positions listed in appropriation, conversion of into part-time positions, legality of | 0-3920 | 272 |

V

| | | |
|--|--------|-----|
| Vital Statistics | | |
| Birth and deaths | | |
| Certificates registered with county clerk but not with State Registrar as being "not previously recorded" | 0-3775 | 263 |
| Local registrar, justice of the peace as divested of duties as in incorporated cities having 2,500 or more inhabitants | 0-3946 | 276 |

W

| | | |
|---|--------|-----|
| Warehouses | | |
| Riverside State Warehouse Company, extension of charter of by Secretary of State, authority for | 0-3947 | 276 |
| Warrants | | |
| County warrants | | |
| Texas Defense Guard, warrants drawn on funds appropriated to by commissioners' court, authority of county auditor to sign | 0-3891 | 267 |
| State warrants | | |
| Examining trial fees to county attorney, warrant in payment of as payable to county attorney even though services are rendered by assistant | 0-3864 | 265 |

WATER CONTROL AND IMPROVEMENT
DISTRICTS

| | | |
|---|--------|-----|
| Property within water control and improvement district, forcing owner of to accept services of, legality of | 0-3954 | 277 |
| Revenue bonds issued by water control and improvement districts, liability of property of subscriber for payment of | 0-3954 | 277 |
| Revenue bonds issued by water control and improvement district, relief of holders of from inadequate servicing | 0-3954 | 277 |

| | Opinion No. | Page |
|--|-------------|------|
| Witnesses | | |
| Depositions | | |
| Board of Insurance Commissioners | | |
| Authority of to authorize examiner to give, and remedy of in event of refusal | 0-3932 | 274 |
| WORDS AND PHRASES | | |
| "Common Carrier" | 0-3964 | 277 |
| "Contract carrier" | 0-3964 | 277 |
| "Good Witnesses" | 0-3875 | 265 |
| "Motor carrier" | 0-3964 | 277 |
| "Non-resident" | 0-3901 | 269 |
| "Not previously registered" | 0-3775 | 263 |

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Z

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