



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

February 16, 1939

Hon. M. F. Kiepe
County Attorney
Lee County
Giddings, Texas

Dear Sir:

Opinion No. O-292

Re: Is the Assessor Collector of taxes for Lee County entitled to retain a maximum of \$4,000.00 as his fees of office, out of taxes collected by him during the year 1938, if the office earns sufficient fees out of that amount?

Your request for an opinion on the above stated question has been received by this office.

Article 3901-1 reads as follows:

"Section 1. In all counties having a population of not less than thirteen thousand, three hundred and fifty (13,350) and not more than thirteen thousand, four hundred and forty (13,440), according to the most recent available Federal Census and each available Federal Census thereafter, the Assessors-Collectors of Taxes of such counties shall be entitled to receive the fees of office earned by their offices in accordance with the provisions of the Maximum Fee Bill; provided, however, that in such counties the maximum amount of fees which may be retained by such officer, including all excess fees, shall be Four Thousand Dollars (\$4,000), provided such office earns sufficient fees to pay this amount.

"Section 2. Each Assessor-Collector of taxes earning fees in excess of Four Thousand

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Dollars (~~4~~2,000) shall make disposition of such excess in accordance with the provisions of the Maximum Fee Bill. All Assessors-Collectors in counties hereby affected shall be entitled to deputies and assistants in the manner authorized in the Maximum Fee Bill."

Article 3901-1, supra, by its terms provides that in all counties having population of not less than 13,350 and not more than 13,440, according to the most recent available Federal census and each available Federal census thereafter, the assessor-collector of taxes in such counties may retain a maximum of \$4,000.00 if the office earns sufficient fees to pay that amount. The population of Lee County is 13,390, thus falling within the terms of this article. Lee County is the only county in the State which, according to the last census, has a population within the limits specified in the act.

Section 56, Article 3 of the State Constitution provides, in part, as follows:

"The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special laws, authorizingregulating the affairs of counties, cities, towns, wards or school districts;....and in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing special laws for the preservation of game and fish of this State in certain localities."

In the case, Gray vs. Taylor, 227 U. S. 51, the Supreme Court of the United States defined a local law as:

"The phrase 'local law' means primarily, at least, a law in fact, if not in form, is directed only to a specific spot."

The case, City of Fort Worth vs. Bobbitt, 36 SW (2nd) 470, holds among other things, that:

"An act applicable to counties having

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a population of from 55,190 to 35,200 was evasive and special, citing Hixson vs. Burson, 54 Ohio State 470; Owen County Commissioners vs. Spangler, 159 Ind. 575, and that an act authorizing bonds by cities having between 106,000 and 110,000 inhabitants by 1920 census being applicable only to one city held local law within constitutional provision." Constitution Article 3, Section 26.

The case, Bexar County vs. Tyman, et al, 97 SW (2nd) 567, holds in effect, that:

"Courts in determining whether law is public, general, special or local will look to its substance and practical operation rather than to its title, form, phraseology since otherwise prohibition and fundamental law against special legislation would be nugatory. The Legislature may classify counties on basis of population for purpose of fixing compensation of county and precinct officers but classification must be based on real distinction and must not be arbitrarily devised to give what is, in substance, a local or special law the form of general law. Acts reducing salaries of officers in counties of 290,000 and less than 310,000 population held unreasonable and arbitrary in its classification and void as a special law."

We believe that whether the act in question is to be regarded as special and whether its operation is uniform throughout the State depends upon whether population affords a fair basis for the classification of counties with reference to matters to which it relates and whether the result it accomplishes is in fact a real classification upon that basis and not a designation of a single county to which alone it shall apply under the guise of such classification. The law in question was so drawn that it is general in form but only applied at the time it went into effect to Lee County and probably could never apply to another county. We think that a

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county can be designated by description just as effectively as it can be named and that the application of this act is so inflexibly fixed as to prevent it ever being applicable to other counties.

Article 3883 provides, in general, that counties containing 25,000 or less inhabitants that the fees to be retained by the tax assessor-collector, tax assessor or tax collector shall be \$2,400.00 except as otherwise provided in this act.

In view of the foregoing authorities, you are respectfully advised that it is the opinion of this Department that Article 3901-1 is a special law and, therefore, is unconstitutional and void and that the assessor-collector of taxes for Lee County would not be entitled to retain a maximum of \$4,000.00 as his fees of office for the year of 1938, but that the amount of fees to be retained by such officer would be governed by the general fee law of this State.

Trusting that the foregoing answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Ardell Williams
Assistant

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APPROVED:

ATTORNEY GENERAL OF TEXAS