



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

March 28, 1939

Hon. Bill S. Watkins
County Attorney
Llano County
Llano, Texas

Dear Sir:

Opinion No. O-529

Re: Can a part of the ex-officio salary of a county attorney be paid out of the General Road and Bridge Fund as compensation for duties benefiting the roads of the county?

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

Article 3895, Revised Civil Statutes, reads as follows:

"The Commissioners' Court is hereby debarred from allowing compensation for ex-officio services to county officials when the compensation and excess fees which they are allowed to retain shall reach the maximum provided for in this chapter. In cases where the compensation and excess fees which the officers are allowed to retain shall not reach the maximum provided for in this chapter, the Commissioners' Court shall allow compensation for ex officio services when, in their judgment, such compensation is necessary, provided, such compensation for ex officio services allowed shall not increase the compensation of the official beyond the maximum of compensation and excess fees allowed to be retained by him under this chapter. Provided, however, the ex officio herein authorized shall be allowed only after an opportunity for a public hearing and only upon the affirmative vote

of at least three members of the Commissioners' Court."

Article 3895, supra, authorizes an allowance for ex-officio services within the limitations stated. "Ex-Officio" signifies from or by virtue of office. It means an authority derived from official character or annexed to the official position and not expressly conferred upon the individual. The expression has been said to refer to services which, though imposed upon the officer because of his official position, are not necessarily incident to the performance of the general duties of his office. *Nichols vs. Galveston County*, 235 SW 1116.

Section 9, Article 8 of the Texas Constitution prescribes the maximum rate of taxes for general purposes for roads and bridges, for juries, and for permanent improvements respectively. The money arising from taxes levied and collected for each of the above enumerated purposes are constitutional funds.

The Commissioners' Court has no authority to transfer money from one to another constitutional fund, or to expend, for one purpose, tax money raised ostensibly for another purpose. The immediate purpose of the provision is to limit the amount of taxes that may be raised for these several purposes, respectively, and is also designed to inhibit excessive expenditures for any such purposes and to require that any and all moneys raised by taxation for any purpose shall be applied to that particular purpose and no other. *Carroll vs. Willis* 202 SW 504; *Ault vs. Hill County*, 116 SW 359; *Tex. Jur.* Vol. 11, pages 609-10-11; *Henderson County vs. Burk*, 262 SW 94.

You are respectfully advised that it is the opinion of this Department that the ex-officio salary of the county attorney or no part thereof can be paid out of the General Road and Bridge Fund as this fund is a

Hon. Bill S. Watkins, March 28, 1939, Page 3

constitutional fund and the money of such constitutional fund must be applied to that particular purpose for which it was raised and no other.

Trusting that the foregoing answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

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APPROVED:

N. F. Moore

FIRST ASSISTANT ATTORNEY GENERAL