



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Roy Sansing
County Attorney
Lipscomb County
Higgins, Texas

Dear Sir:

Opinion No. O-1849
Re: Compensation for ex-officio
services for county attorney
on a fee basis.

Your request for an opinion of this department on the questions as herein stated has been received.

Your letter reads in part as follows:

"I am County Attorney of Lipscomb County, having been re-elected in 1938, without opposition. I have a brother-in-law who was also elected as one of the County Commissioners of this County. The fees of office as County Attorney in this County are not sufficient to warrant anyone holding office, without compensation for ex-officio services. By an order made by a unanimous vote of the Commissioners' Court in January, 1939, the Commissioners allowed me \$40.00 per month, for ex-officio services, and further provided that I might retain the fees allowed by law so long as the total of my fees and the \$40.00 per month did not exceed the maximum compensation allowed by law for the office of County Attorney. I am very well satisfied with the laws in question, but in view of the fact that it involves me personally, and I want to be fair with the Commissioners' Court, I would like to have your opinion on the following questions:

"1. Can a Commissioners' Court allow a county attorney compensation for ex-officio services in a county whose population is about 5000, and also allow him to retain the fees of office, provided by law, if the total of the compensation

Honorable Roy Sansing, Page 2

for ex-officio services and the fees allowed by law do not exceed \$2400.00 per year:

"2. Would the Commissioners Court of a county with approximately 5000 population, one member of which is a brother-in-law to the County Attorney, violate the nepotism law by voting to allow the County Attorney, elected by the people of the County, compensation for ex-officio services, together with fees allowed by law, provided the sum of the two items would not exceed \$2400.00 per year?"

According to the last Federal Census Lipscomb County has a population of four thousand five hundred and twelve (4,512) inhabitants; and the county officials of said county are compensated on a fee basis.

Articles 3883 and 3891 and Vernon's Annotated Civil Statutes, reads in part as follows:

"Article 3883. Except as otherwise provided in this Act, the annual fees that may be retained by precinct, county and district officers mentioned in this Article shall be as follows:

"1. In counties containing twenty five (25,000) thousand or less inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor, or the Assessor and Collector of Taxes, Twenty-four Hundred (\$2400.00) Dollars each; Justice of the Peace and Constable, Twelve Hundred (\$1200.00) Dollars each.

". . ."

"Article 3891. Each officer named in this Chapter shall first out of the current fees of his office pay or be paid the amount allowed him under the provisions of Article 3883, together with the salaries of his assistants and deputies, and authorized expenses under Article 3899, and the amount necessary to cover costs of premium on whatever surety bond may be required by law. If the current fees of such office

Honorable Roy Janning, Page 3

collected in any year be more than the amount needed to pay the amounts above specified, same shall be deemed excess fees, and shall be disposed of in the manner hereinafter provided.

"In counties containing twenty-five thousand (25,000) or less inhabitants, District and County officers named herein shall retain one-third of such excess fees until such one-third, together with the amounts specified in Article 3883, amounts to Three Thousand Dollars (\$3,000). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Fourteen Hundred Dollars (\$1400).

". . . "

Article 3895, Vernon's Annotated Civil Statutes, provides that:

"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."

In answer to your first question you are respectfully advised that where a county attorney is compensated on a fee basis and the compensation and excess fees which he is allowed to retain does not reach the maximum provided

Honorable Roy Sansing, Page 4

for by Article 3883 and Article 3891, supra, the commissioners' court may allow compensation for ex officio services when, in their judgment, such compensation is necessary, provided, such compensation for ex officio services allowed do not increase the compensation of said county attorney beyond the maximum of compensation and excess fees allowed to be retained by him under the two above-mentioned statutes. Provided, the ex officio as authorized by Article 3895, supra, 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.

Regarding your second question, we call your attention to Articles 432 and 433 of the Penal Code, which read as follows:

"No officer of this State or any officer of any district, county, city, precinct, school district, or other municipal subdivision of this State, or any officer or member of any State, district, county, city, school district or other municipal board, or judge of any court, created by or under authority of any general or special law of this State, or any member of the Legislature, shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree of consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever."

"Article 433. The inhibitions set forth in this law shall apply to and include the Governor, Lieutenant Governor, Speaker of the House of Representatives, Railroad Commissioners, head of departments of the State government, judges and members of any and all Boards and courts established by or under the authority of any general or special law of this State, members of the Legislature,

Honorable Roy Sansing, Page 5

mayors, commissioners, recorders, aldermen and members of school boards of incorporated cities and towns, public school trustees, officers and members of boards of managers of the State University and of its several branches, and of the various State educational institutions and of the various State eleemosynary institutions, and of the penitentiaries. This enumeration shall not be held to exclude from the operation and effect of this law any person included within its general provisions."

It will be noted that Articles 432 and 433 of the Penal Code, supra, apply to the appointment, or voting for, or confirming the appointment to any office, position, clerkship, employment or duty of any person related within the prohibited degree to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character. These statutes do not relate to the fixing of salaries or to the commissioners' court in allowing compensation for ex officio services under Article 3895, supra, for county officials where such officials are duly elected.

You are respectfully advised that it is the opinion of this department that there would be no violation of the nepotism statutes where the commissioners' court allowed compensation for ex officio services to the county attorney who was duly elected, when one member of the commissioners' court is a brother-in-law to the county attorney.

Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY *Ardell Williams*

Ardell Williams
Assistant

APPROVED JAN 22, 1940

AG:LM

[Signature]
FIRST ASSISTANT
ATTORNEY GENERAL

