



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-1569
Re: Expenses of Assistant District
Attorney for the 72nd Judicial
District of Texas.

We are in receipt of your letter of February 28, 1940, requesting an opinion of this department, which letter reads, in part, as follows:

"The judiciary appropriation for the fiscal year ending August 31, 1940, carries the following specific appropriation:

"DISTRICT Judges & District Attorneys expenses in districts composed of 2 or more counties (per Article 6820, Revised Civil Statutes of Texas-1925) \$47,400.00."

"Is this department authorized to issue warrant in payment of the expenses incurred by the Assistant District Attorney appointed under Article 325-(1) against this appropriation?"

"The question has arisen whether this appropriation covers the expenses of the Assistant as well as the expenses incurred by the District Attorney himself."

The item of appropriation quoted in your letter is found in House Bill No. 257, Acts 46th Legislature, and said Act does not contain an additional appropriation specifically naming or designating the Assistant District Attorney in question.

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Article 326 (L), Vernon's Texas Civil Statutes (Acts 1931, 42nd Leg., p. 745, ch. 292) authorizes the District Attorney of the 72nd Judicial District to appoint an assistant, who, upon his appointment and qualification is authorized to represent the State in any Court or proceeding in which the District Attorney is authorized to represent the State; this authority to be exercised, however, under the direction of the District Attorney. The emergency clause of this Act states that an appointment of an Assistant District Attorney of the 72nd Judicial District was necessary by reason of the fact that the District Attorney of the 72nd Judicial District was also required to prosecute all criminal cases in the 99th Judicial District, which made it physically impossible for said District Attorney to attend to all of his duties.

The Assistant District Attorney of the 72nd Judicial District, when representing the State as provided in Article 326 (L), supra, under the direction of the District Attorney, performs the duties of the District Attorney. Authorized expenses incurred in the performance of such duties and incidental thereto should properly be considered as expenses incident to the office of the District Attorney. As we construe the appropriation in question, it was not intended to be personal to the District Attorney, himself, but was intended to be used for the purpose of defraying expenses properly incurred in the discharge of the duties of that office.

It is our opinion that the Comptroller's Department is authorized to issue warrants in payment of the expenses incurred by the Assistant District Attorney appointed under Article 326 (L), supra, against the item of appropriation to which you refer in House Bill No. 257, Acts 46th Legislature, when such expenses are properly incurred under the direction of the District Attorney and in the discharge of the duties of the District Attorney.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Cecil C. Cammack
Cecil C. Cammack
Assistant

CCC:RS

APPROVED APR 13, 1940

Gerald B. Mann

ATTORNEY GENERAL OF TEXAS

