



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

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

Dear Mr. Sheppard:

Opinion No. 0-2796

Re: Construction of Section 33
of Article XVI of the Con-
stitution as it affects the
right of a Criminal District
Attorney to represent the
State in a civil suit under
the circumstances stated.

We have your letter of October 2, 1940, requesting
an opinion as follows:

"I am presenting your Voucher No. 91
drawn in favor of Forrester Hancock for ser-
vices rendered the State of Texas in the
amount of \$50.00. You will please advise if
I am prohibited from paying this account by
reason of Section 33, Article 16 of the Con-
stitution of this State."

Mr. Forrester Hancock is Criminal District Attorney
for Ellis County and the claim referred to is for his profes-
sional services rendered in a cause wherein the State of Texas
was sued as a defendant, pending at Waxahachie, Ellis County,
Texas.

Your letter does not so state, but we are advised
Mr. Forrester came into the case at the request of Mr. Richard
Cooke, Assistant Attorney General of Texas, who was handling
the defense of the case. Mr. Hancock has never been an Assis-
tant to the Attorney General.

Section 33, of Article XVI, of the Constitution, reads
as follows:

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"The Accounting Officers of this State shall neither draw nor pay a warrant upon the Treasury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, except as prescribed in this Constitution. Provided, that this restriction as to the drawing and paying of warrants upon the Treasury shall not apply to officers of the National Guard of Texas, the National Guard Reserve, the Officers Reserve Corps of the United States, nor to enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States, nor to retired officers of the United States Army, Navy, and Marine Corps, and retired warrant officers and retired enlisted men of the United States Army, Navy and Marine Corps."

That part of the section which forbids the drawing or payment of a warrant against the public funds of the State to pay to any person as "agent, officer or appointee", undoubtedly covers the present case for Mr. Hancock is an officer -- Criminal District Attorney -- whose compensation is fixed by statute. We do not believe, however, that his employment as an attorney in one case made him the holder of another "office or position of honor, trust or profit." If that were the case, every practicing attorney would hold as many "positions * * * under the State" as he had clients with pending suits. This is not the meaning of the word "position" in this connection.

The case involving the question of fee to Mr. Hancock was a civil action against the State, by permission of the Legislature, for damages incident to the construction of a highway and was not one which the Criminal District Attorney for Ellis County was called upon to defend.

So that, answering your question specifically, this department is of the opinion that Section 33, of

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Article XVI, of the Constitution affords no obstacle to the issuance of a warrant in payment of the account tendered.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Ocie Speer
Ocie Speer
Assistant

OS-MR

APPROVED NOV 25, 1940

Gerald B. Mann
ATTORNEY GENERAL OF TEXAS

