



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
~~WILLIAMSON~~
ATTORNEY GENERAL

Honorable I. Predecki
County Auditor
Galveston County
Galveston, Texas

Dear Sir:

Opinion No. 0-2883

Re: Authority of county to render financial assistance to National Guard if such guard unit is called into the United States Army.

Your letter of November 1, 1940, requesting our opinion on the question therein presented reads:

"On August 26th, 1940, at a meeting of the Commissioners' Court called for the purpose of holding a hearing on the 1941 Budget, there came to the Court a communication from John O. Clinton, Captain, 143rd Infantry, Commanding Company H, Texas National Guard, together with the report of the County Attorney quoting the law (Article 5885 R.C.S.) which became effective May 1st, 1939, relative to an appropriation to the National Guard to pay the necessary expenses of the administrative unit, and on motion duly seconded and carried, the County Commissioners' Court authorized the sum of \$50.00 per month effective January 1st, 1941, to be appropriated and included in the 1941 Budget. This amount, of course, to be paid out of the General Fund of the County.

"On October 22nd, 1940, a communication was received from John O. Clinton of the 143rd Infantry, requesting the Court to issue the necessary instructions whereby the contribution of \$50.00 per month referred to above, shall be mailed to the First National Bank of Galveston to be deposited to the credit of Company H, Texas National Guard, and on motion that was duly seconded and carried, the Court referred the matter to the County Auditor with power to act.

"Since this Company, as I understand, will leave Galveston for service on December 4th, 1940,

and that they will be away from here for about a year, I respectfully ask your opinion as to my authority to sign a warrant and deliver same to the First National Bank of Galveston as requested, and does this request violate Article 5885 in view of the fact that they will not be here during the period stated."

Article 5885 of the Revised Civil Statutes of Texas, 1925, reads:

"Each commissioners court and the council of any city or town in this State are hereby authorized and empowered, in their discretion, to appropriate a sufficient sum, not otherwise appropriated, to pay the necessary expenses of the troops, batteries, companies, signal corps, hospital corps and bands of the active militia of this State located in their respective counties, cities or towns, not to exceed the sum of one hundred dollars per month for such expenses of any one organization." (Underscoring ours)

The word "located" is defined by Webster's International Dictionary:

"To establish in a certain place" or "to settle in a certain place."

"Locate" is defined:

"To designate the cite or place of."

We believe the Legislature in passing Article 5885, supra, contemplated providing means by which the governing authorities of counties and cities could render financial aid to their local National Guard units established and maintained within their particular localities. We do not believe the power to appropriate governmental funds prevails when the unit for which such appropriation is made is called into the United States Army.

If, therefore, the unit for which the item of \$50.00 per month is included in your 1941 Budget has been removed from your county by January 1, 1941, you should not issue your warrant for such item. If such unit is thereafter released from the United States Army during the year 1941 and returns to your county, you would be authorized to resume payment for the remaining months of the year.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Lloyd Armstrong
Lloyd Armstrong
Assistant

LA:AW:wc

APPROVED NOV 16, 1940
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/R.W.F. Chairman