



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Maurice R. Bullock
County Attorney
Pecos County
Fort Stockton, Texas

Dear Sir:

Opinion No. C-3801

Re: Is it lawful for the commissioners' court to employ a "special livestock deputy" whose duties shall be confined to protecting livestock in Pecos County from theft?

Your letter of July 17, 1941, requesting an opinion of this department on the above stated question has been received.

We quote from your letter as follows:

"I respectfully request your opinion as Attorney General in answer to the following question:

"Is it or is it not lawful for the Commissioners' Court of Pecos County to employ a 'special livestock deputy, whose duties shall be confined to protecting livestock in Pecos County from theft'?"

"STATEMENT OF FACTS

"According to the last Federal census Pecos County has slightly over 8,000 population. The county has four Justice Precincts. The Sheriff has three deputies in Fort Stockton, the county site, and one deputy in each of the other Justice Precincts. In addition to these deputies the Commissioners' Court has employed a

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'special livestock deputy' to patrol the ranch country of the entire county to guard against livestock theft and apprehend persons who might be guilty of livestock theft. It is admitted that a serious need exists for such officer, and our only question is whether or not he may legally be employed and paid as aforesaid.

"Art. 7155A, Revised Civil Statutes, has not been given effect in Pecos County by petition or election.

"Enclosed herewith you will find copy of letter brief on the above question I have today submitted to the Honorable W. P. Rooney, County Auditor, Fort Stockton, Texas."

This department has heretofore ruled on a question similar to the one presented in your inquiry. However, this opinion involved the employment of a special officer working in four counties to apprehend cattle thieves instead of one county. This opinion is No. O-241 and holds:

"The commissioners' court has no authority to pay out of county funds money for the employment of the special officer working in four counties to apprehend cattle thieves. Article 7155a, R.C.S., 11 Texas Jurisprudence, page 562-566, inc. Such office does not exist at law and the commissioners' court is without authority to create such office."

In your letter to the County Auditor of Pecos County, bearing date July 16, 1941, you refer to Article 6869, Vernon's Annotated Civil Statutes, relative to the appointment of deputies by the sheriff. The number of deputies to which the sheriff is entitled is fully discussed in our Opinion No. O-12, a copy of which we are enclosing for your information. This Opinion holds that Article 6869, has been superseded and that the appointment of deputy sheriffs is in the sound discretion of the commissioners' court under Article 3902, using the following language:

"The department is not in possession of definite decision affecting the question on hand, and therefore must arrive at the conclusion that Article 6869 * * * which applies to the sheriffs under the Fee Law, has been superseded * * * by Article 3902, * * * and by the Officers' Salary Law of the

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State of Texas.

"* * * it rests within the discretion of the Honorable Commissioners' Court of Galveston County, Texas, as to the number of deputies which the sheriff should employ."

The following quotation is found in the case of Tarrant County vs. Smith, 81 S.W. (2d) 537:

"The commissioners' court can limit the number and salary of deputy sheriffs, but they have no power over the naming of the individuals to be appointed, and are especially prohibited from attempting any such last named influence. Article 3902."

Article 7155a, Vernon's Annotated Civil Statutes provides in part as follows:

"Section 1. In all counties in this State having ten thousand (10,000) or more cattle, sheep, and goats rendered for taxation, the qualified voters of such county may, as hereinafter provided, employ additional assistance to the law enforcement officers of such county as hereinafter provided.

"Upon the petition of ten (10) per cent of the qualified voters of such county, present to the Commissioners' Court in open Regular Session, requesting such Court to order an election to be held in such County to determine whether or not said Court, when acting as a Board of Equalization in such County, shall levy, and cause to be assessed and collected an annual tax not to exceed one (1) cent per head on all sheep and goats and not to exceed five (5) cents per head on all cattle, within such County; said Court shall order such election to be held within such county, in accordance with the petition therefor;
* * *

"Section 2. All moneys assessed and collected by the Assessor and Collector of Taxes for each County of this State as provided for in Section 1 hereof, shall be paid by said Collector unto the County

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Treasurer of such County, and said Treasurer shall deposit said moneys to a fund to be known as 'The Domestic Livestock Protective Fund' and such moneys shall never be expended for any other purpose than is herein provided.

"Section 3. To aid in the enforcement of all the Penal Laws of this State and in ferreting out and detecting any violations thereof, it shall be the duty of the Commissioners' Court of such County adopting the provisions hereof, and they are hereby authorized and required to employ for such service, in addition to the officers now provided for by law, as many other competent and discreet persons as, in the judgment of said Court, is deemed necessary for said purposes, and shall fix their compensation; provided however, no such person, or persons, shall be paid in excess of Five Dollars (\$5) per day, while in actual service; and provided further that at no time, shall the moneys expended in the payment of such person, or persons, for services, exceed the amount of money collected therefor. Such Court shall designate the duties to be performed by all such persons and shall require them to make monthly reports in writing to said Court as to the manner in which they have performed such duties."

It is stated in your letter, in effect, that Article 7155a, supra, has not been given effect in Pecos County by petition and election. Therefore, said County would have no authority to employ any person, or persons in addition to the officers now provided for by law, for the purposes set forth in said statute.

In view of the foregoing statutes and authorities you are respectfully advised that it is the opinion of this department that the Commissioners' Court of Pecos County has no legal authority to employ a "special livestock deputy", whose duty shall be confined to protecting livestock in Pecos County from theft. With reference to the number of deputies the sheriff may appoint with the consent and permission of the Commissioners' court is discussed in our Opinion No. 0-12. We are also enclosing a copy of our Opinion No. 0-241 for your information.

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Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

APPROVED JUL 29, 1941

ATTORNEY GENERAL OF TEXAS

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