



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

The Opinion
Morrison's Opinion
0-1585

GERALD C. MANN
ATTORNEY GENERAL

Honorable H. L. Roberson
County Attorney
Winkler County
Kermit, Texas

Dear Sir:

Opinion No. 0-4226

Re: Is there any way that the Commissioners' Court can raise the salary of a constable after such salary has been set?

Your letter of November 18, 1941, requesting an opinion of this department on the above stated question reads as follows:

"Re: The Commissioners Court of Winkler County placed the Precinct Officers on a salary basis, set their salary at regular meeting in January, 1941. Is there any way that the Court can raise the salary of a Constable, after the Constable's salary has been set. Will the Commissioners' Court be forced to wait until January 1942, for the purpose of raising the Constable's salary.

"Under Article 3912e, Sec. 17 (a), Vernon's Statutes, we find:

"(b) In counties where it shall have been determined that precinct officers shall be compensated on an annual salary basis it shall be the duty of the Commissioners' Court of such county to fix the salary allowed to such officers. Each of said officers shall be paid in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation earned by him in his official

capacity for the fiscal year 1935 and not more than the maximum amount allowed such officer under laws existing August 24, 1935.

"In view of the foregoing authority the Commissioners' Court unquestionably has the authority to set the constable's salary in January, but it is doubtful as to whether or not the Court has the authority to raise or lower the salary during the remainder of the year.

"In your opinion, is it possible in any way to raise the salary of a constable after the salary has been set for the year. The salary must be paid in twelve (12) equal installments as set out in the statutes."

Winkler County has a population of 6,178 inhabitants according to the 1940 Federal Census.

Section 15 of Article 3912e, Vernon's Annotated Civil Statutes, provides in part:

"The Commissioners' Court in counties having a population of less than twenty thousand (20,000) inhabitants, according to the last preceding Federal Census at the first regular meeting in January of each calendar year, may pass an order providing for compensation of all county and precinct officers on a salary basis. . . ."

Section 17 (a) Article 3912e, supra, reads in part as follows:

"The term 'Precinct Officers' as used in this Act means justices of the peace and constables.

". . .

"(b) In counties where it shall have been determined that precinct officers shall be compensated on an annual salary basis it shall be the duty of the Commissioners' Court of such county to fix the salary allowed to such officers. Each of said officers shall be paid in

Honorable H. L. Roberson, Page 3

money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation earned by him in his official capacity for the fiscal year 1935 and not more than the maximum amount allowed such officer under laws existing August 24, 1935. . . ."

In our opinion No. O-1595, it is stated:

". . . that the commissioners' court has the right and authority to fix the salaries of the officers named in Section 13, Article 3912e, supra, at any amount not less than the total sum earned as compensation by the officer in his official capacity for the fiscal year 1935, and not more than the maximum amount allowed such officer under laws existing on August 24, 1935, and when such salaries have once been fixed by the commissioners' court for said officers, they cannot be changed during that year; however, the commissioners' court may change the salaries of said officers for the following year, provided such salaries are not less than the total sum earned as compensation by the officer in his official capacity for the fiscal year 1935, and not more than the maximum amount allowed such officer under laws existing on August 24, 1935."

It will be noted that Section 13, Article 3912e, which is referred to in the above mentioned opinion is applicable to counties having a population of 20,000 inhabitants or more, and less than 190,000 inhabitants according to the last preceding Federal Census. However, we think that the converse of what was said there with reference to a decrease in salary is equally applicable to paragraph (b) Section 17, Article 3912e, regarding an increase in the salary of a constable. Therefore, it is our opinion that when the salary of the constable has once been fixed by the Commissioners' Court for the year in compliance with Section 17, supra, the salary cannot be changed during that year; however, the Commissioners' Court may change the salary of the constable for the following year, provided such salary is not less than the total sum earned as compensation by the constable in his official capacity for the fiscal year 1935, and not more than the maximum amount allowed such

Honorable H. L. Roberson; Page 4

officer under laws existing on August 24, 1935. Specifically answering your question, there is no way that the Commissioners' Court can raise the salary of a constable who is compensated on an annual salary basis after such salary has been set. In other words, the salary of the constable cannot be increased or decreased after it has been fixed by the Commissioners' Court for that year, but may be increased or decreased for the following year within the limitations set forth in Section 17, supra.

It is stated in opinion No. C-1595, supra;

" . . . it is the opinion of this Department that the commissioners' court has no authority to fix or change the salaries of the county commissioners, . . . "

Articles 2350 - 2350-1, inclusive, Vernon's Annotated Civil Statutes, provide for the salaries of the County Commissioners in the various counties. Article 2350(2) provides:

"The Commissioners' Court at its first regular meeting each year shall, by order duly made and entered upon the minutes of same court, fix the salaries of the county commissioners for such year within the limits as provided for in this act."

Therefore, the Commissioners' Court has the authority to fix the salaries of the County Commissioners at its first regular meeting each year, for such year, within the limits as provided for in the act. Our opinion No. C-1595, supra, is modified accordingly to this extent.

We are enclosing a copy of said opinion for your information.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED DEC 4, 1941

ROSS CULLER
DEPUTY ATTORNEY GENERAL

By *Ardell Williams*

Ardell Williams
Assistant

AW:GO
ENCLOSURE

APPROVED
OPINION
COMMITTEE
BY *Blotz*
CHAIRMAN