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Overruled by K-20
Mr. [unclear] [unclear]

Hon. Fred V. Meridith
County Attorney
Kaufman County
Kaufman, Texas

Dear Sir:

Opinion No. 0-6372

Re: Whether the Sheriff of Kaufman County can appoint a deputy sheriff without compensation being paid to such deputy, and related matters.

Your letter of recent date, requesting the opinion of this department on certain questions stated therein, is, in part, as follows:

"Can the Sheriff of Kaufman County appoint a deputy sheriff without compensation being paid to such deputy?"

"Kaufman County has a population of 38,308 according to the 1940 Federal Census. By authority of Art. 3912e, Sec. 13, the Commissioners Court fixed the salaries of county officers, including Sheriff. Our Commissioners Court has authorized and fixed salaries for two deputies in the Sheriff's office, and these appointments have been made. One deputy Sheriff resides in the City of Terrell, in Justice Precinct No. 3 of Kaufman County.

"In Justice precinct No. 3 is located Terrell Aviation, Ltd., an airport situated upon land belonging to Kaufman County and being operated by Maj. W. H. Long and associates in limited partnership, which is a school for the flight training of British cadets, and known as British Flight Training School No. 1. This school is the recipient of many gratuities from both the City of Terrell and County of Kaufman, as well as from the Defense Plant Corporation. Formerly, some American cadets along with the British were trained there, but now only British. The predecessor in the Sheriff's office, in line with request from the school's officials, appointed two or three deputy

sheriffs among the employees of the school; these commissions were merely honorary, and carried no compensation, as the school wanted to have some officers on the premises who would be authorized to act in case of breaches of the peace, since the school is located out at the edge of the city.

"Terrell Aviation, Ltd., through its personnel manager, has now requested our Sheriff to appoint a deputy there, and requesting that the Sergeant of the Guard at the school be so appointed. Our Sheriff attended the school of instruction for newly elected Sheriffs at Camp Mabry, and has some sort of recollection that at this school he was advised that he could appoint no deputy sheriff who was not paid compensation of at least \$40.00 per month. He seems to recollect that there was either a decision on this point, or an attorney general's opinion to this effect, and hesitates to give a reply to Terrell Aviation, Ltd., concerning their request until he is correctly advised. If there be such, I would appreciate citation or copy of opinion.

"I note from the provisions of Art. 6869, that a Sheriff may appoint deputies . . . not exceeding three in the Justice precinct in which is located the county site of such county, and one in each Justice precinct.... The City of Terrell is located, as well as Terrell Aviation, Ltd., in Justice precinct No. 3, and the Sheriff already has one duly constituted deputy, drawing monthly compensation by salary, residing in this precinct. I find no special act of the Legislature with respect to deputies for the Sheriff in counties of a population of 38,308, as is Kaufman County.

"If the Sheriff of Kaufman County appointed, with the sanction and approval of the Commissioners Court, a deputy sheriff to act only on the premises of Terrell Aviation, Ltd., without compensation from the said Kaufman County, and without fees of office, would such appointee be authorized to carry a pistol and be a duly constituted peace officer, and his acts as such on said premises be legally performed?

"(2) Is there such a thing as an 'honorary' deputy sheriff's commission?"

Article 3902, Vernon's Annotated Civil Statutes, provides, in part:

"Whenever any district, county, or precinct officer shall require the services of deputies, assistants or clerks in the performance of his duties, he shall apply to the county commissioner's court of his county for authority to appoint such deputies, assistants or clerks, stating by sworn application the number needed, the position to be filled and the amount to be paid. . . ."

In connection with the foregoing statute, your attention is directed to Article 6869, Vernon's Annotated Civil Statutes, which provides in part as follows:

"Sheriffs shall have the power, by writing, to appoint one or more deputies for their respective counties, the number of deputies appointed by the sheriff of any one county shall be limited to not exceeding three of the Justice Precincts in which is located the county site of such county, and one in each Justice Precinct, and a list of these appointments shall be posted up in a conspicuous place in the clerk's office....."

This Department has ruled prior to and since the enactment of the present officers' salary bill, under which Kaufman County is now functioning that Article 6869 has been superseded by Art. 3902 in so far as said statutes are in conflict. This department held in Opinion No. 0-12 that Art. 6869 has been superseded by Art. 3902 in so far as said statutes are in conflict. We quote from Opinion No. 0-12, in part, as follows:

"This department is not in possession of any definite decision affecting the question at hand, and therefore must arrive at the conclusion that Art. 6869. . . . which applies to the sheriffs under the fee law has been superseded by Art. 3902 and by the officers' salary law of the 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."

It is stated 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. R. C. Art. 3902."

In Opinion No. O-925, rendered by this department, it is stated:

"In the case of Trammel vs. Shelton, 45 T. W. 319, the relevant provisions of Art. 6869 substantially the same as enacted in 1889, which grants authority to the Sheriff to appoint deputies and limit their number was held to be directory. Such authority as was by this Article and previously at common law given to the Sheriff was by general law superseded and invested in the Commissioners' Court under the provisions of Article 3902, supra. Such a construction as would harmonize the two Articles, 6869 and 3902, supra, should be given with the later article controlling. While said Article 6869 seeks to limit the discretion to be exercised by the Sheriff, we cannot say that such Article would, as a matter of law, restrict the power of the Commissioners' Court under Article 3902, as amended, should the facts warrant the necessity for the appointment by the Sheriff of more deputies than would be permitted under the provisions of Article 6869."

It was held in our Opinion No. O-1896 that a sheriff has authority, with the approval of the commissioners' court, to appoint a deputy to serve without any compensation. Therefore, in answer to your first question, you are respectfully advised that it is our opinion that the Sheriff of Kaufman County can appoint a deputy sheriff with the approval of the commissioners' court, to serve without any compensation.

In connection with the foregoing statement, we direct your attention to our Opinion No. 0-4420, wherein it is stated:

"In the event a Commissioners' Court authorizes the Sheriff to appoint additional deputies to serve without pay, the order authorizing such appointment should state that the deputies to be appointed are to be allowed no salary, else they might be able to recover for the services on a quantum meruit basis. Harris County vs. Neville (Civil Appeals) 84 S. W. (2d) 834."

In answer to your second question, you are advised that it is the opinion of this department that a deputy sheriff appointed to serve without compensation could legally carry a pistol when actually engaged in the discharge of his official duty. (See Articles 483 and 484, Vernon's Annotated Penal Code). The provisions contained in Article 484, Vernon's Annotated Penal Code, regarding compensation of 240.00, or more, per month, is applicable to deputy constables and special policemen and has no application to a deputy sheriff.

It is our further opinion that a deputy sheriff who is appointed in conformity with the foregoing statutes and who is serving without compensation would have the same authority to act in discharging his official duties as any other deputy sheriff appointed.

Your third question is, "Is there such a thing as an 'honorary' deputy sheriff's commission?"

In answer to this question, you are advised that we have been unable to find any statute or case pertaining to this question. We know of no law authorizing the issuance of an "honorary" deputy sheriff's commission.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By

Ardell Williams

Ardell Williams
Assistant

AW:rt

