



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**GROVER SELLERS
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ATTORNEY GENERAL**

Honorable S. R. Allen
County Attorney
Hamilton County
Hamilton, Texas

Opinion No. 0-6462

Re: (1) Authority of Commissioners' Court to determine whether county officers shall be on fee or annual salary basis at time other than at its first regular meeting in January.
(2) Maximum compensation of sheriff of Hamilton County.

Dear Sir:

We are in receipt of your letter of recent date requesting the opinion of this department on the above stated matters. We quote from your letter as follows:

"In a recent opinion from your department addressed to me, same being Opinion No. 0-6432 Re: Compensation of the Sheriff of Hamilton County, among other things, you referred to Section 2 of Article 3912e, Vernon's Annotated Civil Statutes, which is as follows:

"In counties having a population of less than twenty thousand (20,000) inhabitants according to the last preceding federal census, it shall likewise be the duty of the Commissioners' Court, by its order duly made and entered of record at its first regular meeting in January of each calendar year, to determine whether county officers of such county (excluding county surveyors, registrars of vital statistics and notary publics) shall be compensated on the basis of fees earned by them in the performance of their official duties, and it shall also be the duty of the county clerk to forward to the Comptroller of Public Accounts of the State of Texas, on or before the 31st

day of January, a certified copy of said order of said Commissioners' Court."

"The Commissioners' Court and the Sheriff of this County have requested me to secure an opinion from your department whether it is mandatory that the order of the Commissioners' Court referred to and which is required by said Section to be passed at the first regular meeting in January of each calendar year, must be passed at said time or whether it might be passed at a later date in the year. Also (2) at what sum the court authorized to fix such salary?

"It is insisted by the Sheriff and recognized by the Commissioners' Court that the compensation of the Sheriff's office in this county, based on fees and the \$1,000.00 allowed as ex-officio is inadequate for the amount of work to be done by that office and the responsibility involved, but are at a loss to know how he can legally be compensated, this county being governed by the fee system.

"We would greatly appreciate your opinion with reference to same."

A portion of the provisions of Section 2, Article 3912e, V.A.C.S. is quoted above in your letter.

Section 15, Article 3912e, V.A.C.S., in part, provides:

"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. The Commissioners' Court in each of such counties is hereby authorized, and it shall be its duty, to fix the salaries of Criminal District Attorneys. In the event such Court passes such order they shall pay to each of said District and County officers in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by said officer in his said official capacity

for the fiscal year of 1935 and not more than the maximum allowed such officer under laws existing August 24th, 1935,"

Article 3898, V.A.C.S., in part, provides:

"The fiscal year, within the meaning of this Act, shall begin on January 1st of each year; and each district, county and precinct officer shall file his report and make the final settlement required in this Act not later than February 1st of each year; provided, however, that officers receiving an annual salary as compensation for their services shall, by the close of each month, pay into the Officers' Salary Fund or funds, all fees, commissions and compensation collected by him during said month. . . ."

Under the provisions of Article 3898, the fiscal year of a county begins on January 1st of each year. We think that it was contemplated by the provisions of Section 2, Article 3912e, that during the month of January, the commissioners' court should have determined whether the designated county officers would be compensated on a fee or salary basis, whereby said officers could account for and dispose of the fees of office accordingly, in the manner provided in Article 3898. When the commissioners' court has determined that county officers shall be paid on an annual salary basis, we think that it was contemplated that such annual salary should be paid for the fiscal year, beginning January 1st, in twelve equal installments. We do not think it was within the contemplation of this Act that county officers should be compensated on a fee basis for a part of a year, and, for the remaining portion of said year, be compensated on a salary basis. If it were determined that county officers should be paid on the basis of an annual salary, in any month later than January of any fiscal year, it would be impossible to comply with those provisions as to fixing salaries on an annual basis and paying same in twelve equal installments for that fiscal year.

After carefully considering all of the pertinent statutory provisions, it is the opinion of this department that the provisions of Section 2, Article 3912e are mandatory in effect, and we find no authority for a commissioners' court to determine whether county officers shall be paid on a fee or salary basis, at any time other than at its first regular meeting in January of each year.

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With reference to the maximum compensation of the sheriff of Hamilton County, when the county operates on a fee basis, we refer you to Opinion No. 0-6432, addressed to you, wherein it was pointed out that the maximum amount of ex officio compensation which he could be allowed is One Thousand Dollars (\$1,000.00) per year, and such ex officio compensation as he may receive, together with the fees that he is entitled by law to retain, shall not exceed the sum of Three Thousand Dollars (\$3,000.00) per year. As to the compensation the sheriff may receive, when it has been determined in the manner provided by law, that county officers in said county shall be paid on the basis of an annual salary, the minimum salary of the sheriff is an amount not less than that earned by the sheriff of said county in his official capacity for the fiscal year 1935; and the maximum salary that he may be allowed is an amount not exceeding the maximum amount allowed such officer under laws existing August 24, 1935 (\$3,000.00).

Trusting that the foregoing fully answers your inquiries, we remain

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By

J. A. Ellis
Assistant

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