



THE ATTORNEY GENERAL
OF TEXAS

GROVER SELLERS

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable Lee Curtis
County Attorney
Bell County
Belton, Texas

Dear Sir:

Opinion No. 0-6918

Re: County purchasing and leasing photostatic machine. Can the County Clerk and Commissioners' Court legally employ an operator of photostatic machine and pay him on piece-work or page basis, or is it the duty of Clerk and deputies to operate said machine?

We acknowledge receipt of your request for an opinion on the above matters, said request reading as follows:

"The County Clerk of Bell County has recently explained to me that money could be saved the county in the administration of his office by either the purchase or a lease of a photostatic machine to be used in making copies of deeds and other instruments which the law provides shall be recorded in the office of the County Clerk, and in preparing certified copies of various instruments, such photostatic copies to be in lieu of and substitution for the copies of such instruments as are now made on typewriters by clerks in the office.

"The County Clerk has propounded several questions in this connection. First, would it be lawful for the county to purchase such photostatic machine? Second, would it be lawful for the county to lease such machine for a period of five years? Third, in the event such machine should be acquired by purchase or lease, would it be lawful for the County Clerk or the Commissioners' Court to employ an operator of such machine, or would it be necessary for some deputy clerk to operate the machine? Fourth, if

some one other than a deputy clerk could lawfully be employed to operate such machine, could the compensation be determined on a piece-work or per page basis, or would it be necessary that the compensation be on a salary basis, and, if so, would the maximum salary necessarily be the maximum salary which the County Clerk could pay to a deputy?

"I have advised the County Clerk that in my opinion the Commissioners' Court would have lawful authority to purchase or lease such machine, but that since the law requires the County Clerk to copy various instruments into the permanent records and to prepare and furnish certified copies, it would seem to be the lawful duty of the clerk and his deputies to perform such services, and that there is no authority which would permit the County or the County Clerk to employ some one other than a deputy clerk to operate the machine in performing such services. This opinion is expressed with reluctance because it is my understanding that operators of photostatic machines are able to command and obtain higher salaries than the maximum salary which the County Clerk of Bell County can pay any deputy, and that this conclusion has the practical effect of precluding the possibility of the saving of money to the county, it being my understanding that such machines can be leased and operators can be employed on such a basis as to actually reduce the expenses now incurred in performing the services in the customary manner."

The population of Bell County, Texas, according to the 1940 U. S. Census is 44,863.

This department, in Opinion No. 0-637, held that the County Clerk of El Paso County, Texas, could install and use the photostatic method of recording written instruments which he is authorized and required to record. Judge Ocie Speer, speaking for this department, in Opinion No. 0-2241, said: ". . .Of course, where a statute authorizes the recordation of an instrument the transcription may be by the photographic process, as well as by calligraphic process. We so held in our Opinion No. 0-637. So, also, where certified copies of records are permitted, the copies so certified may be photostatic as well as typewritten or handwritten. . ."

In our Opinion No. 0-3571, we held that the Sheriff of Collin County with the approval of the Commissioners' Court could pay the City of McKinney or Radio Station KTWP a reasonable amount monthly for radio service furnished in connection with the conduct of his office.

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We enclose herewith for your benefit Opinions Nos. 0-637, 0-2241, and 0-3571.

Article 3899, Vernon's Annotated Civil Statutes, provides in part, as follows:

"(b) Each officer named in this Act, where he receives a salary as compensation for his services, shall be entitled and permitted to purchase or charge to his county all reasonable expenses necessary in the proper and legal conduct of his office, premiums on officials' bonds, premiums on fire, burglary, theft, robbery insurance protecting public funds, and including the cost of surety bonds for his deputies, provided that expenses incurred for premiums on officials' bonds for the county treasurer, county auditor, county road commissioners, county school superintendent, and the hide and animal inspector, including the cost of surety bonds for any deputies of any such officers, may be also included, and such expenses to be passed on, predetermined and allowed in the time and amount, as nearly as possible, by the Commissioners' Court once each month for the ensuing month, upon the application by each officer, stating the kind, probable amount of expenditure and the necessity for the expenses of his office for such ensuing month, which application shall, before presentation to said court, first be endorsed by the county auditor, if any, otherwise the county treasurer, only as to whether funds are available for payment of such expenses. The Commissioners' Court of the county of the sheriff's residence may, upon the written and sworn application of the sheriff stating the necessity therefor, purchase equipment for a Bureau of Criminal Identification, such as cameras, fingerprint cards, inks, chemicals, microscopes, radio and laboratory equipment, filing cards, filing cabinets, tear gas and other equipment, in keeping with the system in use with the Department of Public Safety of this State, or the United States Department of Justice and/or Bureau of Criminal Identification.

"Such purchases shall be made by each officer, when allowed, only by requisition in manner provided by the county auditor, if any, otherwise by the Commissioners' Court. Each officer, shall, at the close of each month of his tenure of office, make an itemized and sworn report of all approved expenses incurred by him and charged to his county, accompanying such report with invoices covering such purchases and requisitions issued by him in support of such report.

If such expenses be incurred in connection with any particular case, such report shall name such case. Such report, invoices, and requisitions shall be subject to the audit of the county auditor, if any, otherwise by the Commissioners' Court, and if it appears that any item was not incurred by such officer, or that such item was not a necessary or legal expense of such office, or purchased upon proper requisition, such item shall be by said county auditor or court rejected, in which case the payment of such item may be adjudicated in any court of competent jurisdiction. All such approved claims and accounts shall be paid from the Officers' Salary Fund unless otherwise provided herein."
(underscoring ours)

The facts in the instant case show that the photo-static machine is to be used for the same purpose, and in the place of a typewriter in the performance of duties in the Clerk's office. If the Commissioners' Court determines that a necessity for such machine exists it is the opinion of this department, in view of the authorities above, that the purchase price or the amount paid for the lease of said machine is a reasonable expense necessary in the proper and legal conduct of the Clerk's office of Bell County, Texas. Therefore, your first and second questions are answered in the affirmative.

Section 20, Article 5, State Constitution reads as follows:

"There shall be elected for each county, by the qualified voters, a county clerk, who shall hold his office for two years, who shall be clerk of the County and Commissioners' Courts and recorder of the county, whose duties, perquisites and fees of office shall be prescribed by the Legislature, and a vacancy in whose office shall be filled by the Commissioners' Court, until the next general election for county and State officers; provided, that in counties having a population of less than eight thousand persons there may be an election of a single clerk, who shall perform the duties of district and county clerks."

Article 6600, V. A. C. S., provides:

"The county clerk shall give attested copies whenever demanded of all papers recorded in his office; and he shall receive for all such copies, such fees as may be provided by law."

Article 3902, V. A. C. S., provides in part as follows:

"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 Commissioners' 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. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions and compensation to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; and said court shall make its order authorizing the appointment of such deputies, assistants and clerks and fix the compensation to be paid them within the limitations herein prescribed and determine the number to be appointed as in the discretion of said court may be proper; provided that in no case shall the Commissioners' Court or any member thereof attempt to influence the appointment of any person as deputy, assistant or clerk in any office. Upon the entry of such order the officers applying for such assistants, deputies or clerks shall be authorized to appoint them; provided that said compensation shall not exceed the maximum amount hereinafter set out. The compensation which may be allowed to the deputies, assistants or clerks above named for their services shall be a reasonable one, not to exceed the following amounts:

"* * *

"3. In counties having a population of thirty-seven thousand five hundred and one (37,501) and not more than sixty thousand (60,000) inhabitants, first assistant or chief deputy not to exceed Twenty-one Hundred (2100.00) Dollars per annum; other assistants, deputies or clerks not to exceed Eighteen Hundred (\$1800.00) Dollars per annum each. Provided that nothing in this Act shall be construed as repealing or affecting Section 2 of H. B. No. 694, Chapter 315, Acts 1935, Forty-fourth Legislature, page 724.

"* * *

"9. The Commissioners' Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the deputies, assistants and clerks of any district, county or precinct officer

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justify the increase, to enter an order increasing the compensation of such deputy, assistant or clerk in an additional amount not to exceed twenty-five (25%) per cent of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year of 1944 did not exceed Thirty-six Hundred (\$3600.00) Dollars."

In answer to your third question, you are advised that the Commissioners' Court has no authority to employ an operator of such machine, and if one is purchased or leased it will be the duty of the County Clerk, his deputy, assistant or clerk to operate the same. The County Clerk has the exclusive authority to appoint his deputies, assistants and clerks. He may appoint a deputy, an assistant or a clerk to operate such machine, said deputy, assistant or clerk to be paid as provided for in Sections 3 and 9 of Article 3902, above.

In view of what we have said it becomes unnecessary to answer your fourth question.

We trust that the above satisfactorily answers your inquiries.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By /s/ Jesse Owens
Jesse Owens
Assistant

JO:LJ:EAC

APPROVED NOV 15, 1945

/s/ Grover Sellers

ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE

BY B.W.B.
CHAIRMAN