



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

September 27, 1949

Hon. Joseph H. Mims
County Attorney
Midland County
Midland, Texas

Opinion No. V-915.

Re: Applicability to Midland
County of H. B. No. 54,
51st Leg., relative to the
compensation of county ju-
venile officers.

Dear Sir:

You have requested an opinion as to whether the provisions of House Bill No. 54 of the 51st Legislature, relative to the compensation of county juvenile officers, are applicable to Midland County.

House Bill 54 provides in part:

"The Commissioners Courts of all counties in which Juvenile Officers or Probation Officers, or their assistants, are employed under existing laws of this State, shall fix the salaries to be paid such Juvenile Officers or Probation Officers and their assistants, and provide for their expenses, without limitation. Provided, that in counties where there is a Juvenile Board, said Board shall recommend the salary to be paid to such Juvenile Officer or Probation Officer and their assistants, which salary shall be approved by the Commissioners Court; and provided, further, that no Juvenile Officer or Probation Officer, or their assistants, shall be paid a salary less than that now provided by existing laws. The Commissioners Court is authorized in its discretion to furnish such Juvenile Officers or Probation Officers an automobile and provide an allowance for the expense of operating the same. The provisions of this Act shall not apply to those counties whose population exceeds one hundred and ninety thousand (190,000) according to the last or any future Federal Census."

You state in your request that at the present time Midland County employs no juvenile officer because

until the enactment of House Bill 54, the salary of a juvenile officer for Midland County was not sufficient to attract a competent person to fill the office.

Therefore, the question for our determination is whether the language "are employed under existing laws" limits the Act to those counties employing said officers at the effective date of the Act or applies to counties which employ juvenile officers in the future.

In Smith v. Davis, 85 Ga. 625, 11 S.E. 1024, (1890) the Supreme Court of Georgia, construing a proviso which read: "Provided, that the provisions of this act shall not apply to cases now pending in which motions are made for new trials," stated:

"Grammatically speaking, 'are made' is the passive voice of the verb 'to make.' It may refer to past or to future time. When the reference is to past time, it signifies 'have been made;' when to future time, it signifies 'shall be made.' Whether tested by grammar; or by usage without reference to grammatical rules, the expression, 'cases now pending in which motions are made for new trials,' may be understood as 'cases now pending in which motions have been made for new trials,' or as 'cases now pending in which motions shall be made for new trials.' The phrases, 'are made,' 'are done,' 'are committed,' 'are paid,' 'are satisfied,' etc., used in the sense of 'shall be made,' shall be done,' 'shall be committed,' shall be paid,' shall be satisfied,' etc., may be found scattered up and down through the whole range of statute law. No doubt the instances of the 'shall be' sense are much more numerous in our statutes than instances of the 'have been' sense, for the reason that it is the business of the statutes to provide and prescribe for the future, not for the past."

Article 10, Vernon's Civil Statutes, provides in part as follows:

"The following rules shall govern in the construction of all civil statutory enactments: . . .

"2. The present or past tense shall include the future."

In view of the foregoing, it is our opinion that the words "are employed" refers to future time as well as present or past time. This conclusion is supported by the fact that a serious question as to the constitutionality of the Act would be raised if its provisions were limited only to a designated class of counties to which all other counties would be forever barred. The Bill contains no provision showing such was the Legislature's intention. On the contrary, it is clear that the Legislature intended the Act to apply to all counties of 190,000 inhabitants or less who employ juvenile officers whether at present or in the future.

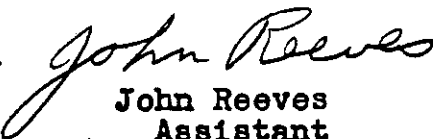
Therefore, it is our opinion, that if a juvenile officer is appointed in Midland County, his compensation would be governed by the provisions of House Bill 54 of the 51st Legislature.

SUMMARY

The compensation of any juvenile officer employed by Midland County is governed by the provisions of House Bill 54 of the 51st Legislature, the provisions of said Act being applicable to all counties in which juvenile officers are employed.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By 
John Reeves
Assistant

JR:mw;bh

APPROVED


PRICE DANIEL
ATTORNEY GENERAL