



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

February 8, 1951

Hon. H. A. Hodges
County Auditor
Williamson County
Georgetown, Texas

Opinion No. V-1149
Re: Authority of the sheriff to order photographs to be taken in connection with an investigation of a crime without first securing approval by the commissioners' court or the county auditor.

Dear Mr. Hodges:

You have requested our opinion whether the sheriff of Williamson County can charge to the county the expense of securing photographs in connection with a criminal investigation conducted by him without first securing permission from the commissioners' court or the county auditor.

Subsection (b) of Article 3899, V.C.S., provides:

"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, . . . and such expenses to be passed on, predetermind 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. . .

"Such pruchases 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."

We think the phrase "all reasonable expenses necessary in the proper and legal conduct of his office" is sufficiently broad in scope to cover the expense of securing photographs necessary in the conduct of a criminal investigation as in the instant case.

As to the necessity of securing the prior endorsement of the county auditor or county treasurer, as the case may be, and the prior approval of the commissioners' court before incurring such an expense, you are referred to State v. Carnes, 106 S.W.2d 399 (Tex. Civ.App. 1937), in which the court states:

"While the entry by the commissioners' court of an order authorizing the appointment of deputies and fixing their compensation upon proper application by the officer in accordance with article 3902 is a condition precedent to his claiming credit, as a matter of right, for salaries paid his deputies, this statutory provision was not intended as a limitation on the power of the commissioners' court, and any affirmative action of the court authorizing or approving the expenditure before or after it was incurred would bind the county and authorize the deduction. The Commissioners' court may ratify that which it might have authorized originally. Cameron County v. Fox (Tex. Com. App.) 61 S.W.(2d) 483."

In view of the foregoing, it is the opinion of this office that the expenditure in this instance may be paid out of the Officers' Salary Fund of the county. Of course, such expenditure must have either the prior approval or the subsequent ratification of the commissioners' court, and is subject to audit by the county auditor (or the commissioners' court, if there is no auditor) as to whether it was an authorized expense.

SUMMARY

The expense of securing photographs as a part of a criminal investigation conducted by a sheriff may be charged to the county as a part of the reasonable expense necessary in the proper and legal conduct of his office, provided such expenditures have prior approval or subsequent ratification by the commissioners' court.

APPROVED:

J. C. Davis, Jr.
County Affairs Division

Jesse P. Luton, Jr.
Reviewing Assistant

Charles D. Mathews
First Assistant

BW:mw:aa

Yours very truly,

PRICE DANIEL
Attorney General

By: s/ Burnell Waldrep
Burnell Waldrep
Assistant