



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

August 31, 1961

Honorable W. G. Walley, Jr.
Acting Criminal District Attorney
Jefferson County
Beaumont, Texas

Opinion No. WW-1130

Re: Compensation of the Acting
Criminal District Attorney
of Jefferson County under
the facts submitted.

Dear Mr. Walley:

Your request for an opinion reads as follows:

"On September 16, 1958, the County Commissioner's Court of Jefferson County employed W. G. Walley, Jr., a licensed and practicing attorney-at-law, to represent the county in eminent domain proceedings on a per diem basis of compensation in accordance with Exhibit "A" hereto attached. Such attorney and his associates immediately entered upon the performance of the obligations undertaken in the letter agreement and has, through his associate in the private practice of law, continued to perform such duties and obligations.

"On March 15, 1961, the Criminal District Attorney of Jefferson County was suspended from the performance of the duties of his office and the said W. G. Walley, Jr., was appointed to perform the duties of such office temporarily by order of the 136th District Court of Jefferson County, Texas, in a removal proceeding instituted under Title 100 of the Revised Civil Statutes of Texas. The said W. G. Walley, Jr. has continuously performed all of the duties of the office of Criminal District Attorney of Jefferson County, Texas

since such appointment which had theretofore been performed by the Criminal District Attorney.

"By judgment rendered June 1, 1961, the 136th District Court of Jefferson County, Texas adjudged, ordered and decreed that a certain \$8,334.00 seized by peace officers from a gaming establishment should be delivered over to the Jefferson County Commissioner's Court 'To be used for the purpose of investigating violations of any of the provisions of the Penal Code of this State.' The County Commissioner's Court received such sum and ordered the same 'deposited in a Special Fund subject to the order of the District Court.' A copy of this judgment and the Commissioner's Court action is attached hereto as Exhibit "B".

"The Attorney General of Texas has heretofore given his opinion that the said W. G. Walley, Jr. is entitled to be compensated while performing the duties theretofore performed by the Criminal District Attorney of Jefferson County at the rate of compensation provided by law as the emolument of the office. On July 26, 1961, the said W. G. Walley, Jr. made written application to the 136th District Court of Jefferson County to be paid from 'the Special Fund subject to the order of the District Court' compensation for performing the duties theretofore performed by the Criminal District Attorney of Jefferson County, the sum of \$4,000.00 for the period commencing March 15, 1961 and ending July 15, 1961. This application was granted and a certified copy of the order granting the same was delivered to the County Commissioner's Court. A copy of this application and the order granting the same is attached hereto as Exhibit "C".

"On July 31, 1961, one Quinten Keith 'reluctantly intruded his views' upon the Commissioner's Court by a letter, a copy of

which is attached hereto as Exhibit "D", in which the writer questioned that the County Commissioner's Court could lawfully comply with the order of the 136th District Court to direct payment of such \$4,000.00 to the said W. G. Walley, Jr.

"The Honorable County Commissioner's Court has directed me to request from you your opinion as to whether that body may lawfully comply with the order of the 136th District Court reflected by Exhibit "C" in view of the legal questions posed in the letter to Keith, dated July 31, 1961, evidenced by Exhibit "D".

"Your opinion thereon is, therefore, requested."

In Attorney General's Opinion No. WW-1064 (1961), this office held:

"The person discharging the duties of the Criminal District Attorney's office during the time that the elected Criminal District Attorney is suspended is entitled to receive the same compensation as the elected Criminal District Attorney during the period of time he discharges the duties of the office of Criminal District Attorney."

Exhibit "C" attached to your request provides, in part, as follows:

"ORDERED that the Honorable County Commissioner's Court of Jefferson County, be, and it is hereby directed to pay over to W. G. Walley, Jr., the sum of Four Thousand (\$4,000.00) Dollars, as compensation for the legal services rendered by the said W. G. Walley, Jr. as Acting Criminal District Attorney of Jefferson County under appointment of this Court in Cause No. D-77,250, The State of Texas, ex rel. J. C. Barry, et al vs. Ramie H. Griffin, in the 136th District Court of Jefferson County,

Texas, from the 15th day of March, 1961 to July 15, 1961, out of the fund of Eight Thousand Three Hundred Thirty-four (\$8,334.00) Dollars heretofore ordered delivered over to said Honorable County Commissioner's Court in this cause; and it is further

"ORDERED that the Clerk of this Court be, and he is hereby directed forthwith to prepare and deliver a certified copy of Relator's Application herein and of this Order to said Honorable County Commissioner's Court of Jefferson County, Texas for its observation and compliance.

"SIGNED, RENDERED, ENTERED AND FILED this 27th day of July, 1961.

"/s/ Harold R. Clayton
Presiding Judge, 136th District
Court of Jefferson County, Texas"

In view of the judgment of the 136th District Court ordering the Commissioners Court of Jefferson County to pay the sum of \$4,000.00 as compensation for legal services as Acting Criminal District Attorney of Jefferson County from the 15th day of March, 1961, to July 15, 1961, and in view of the holding in Attorney General's Opinion No. WW-1064, supra, you are advised that the Commissioners Court of Jefferson County is authorized to pay the compensation referred to in your request, as directed in the judgment of the 136th District Court.

S U M M A R Y

Under the facts stated the Commissioners Court of Jefferson County is authorized to pay W. G. Walley, Jr., compensation as Acting Criminal District Attorney in accordance with the order of the 136th District Court of Jefferson County, Texas.

Yours very truly,

WILL WILSON
Attorney General of Texas

By *John Reeves*
John Reeves
Assistant

Honorable W. G. Walley, Jr., Page 5 (WW-1130)

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman

Vernon Teofan

Sam Ray Wilson

Bob Eric Shannon

Lawrence Hargrove

REVIEWED FOR THE ATTORNEY GENERAL

By: Howard W. Mays