



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

April 2, 1962

Mr. William Hunter  
District Attorney  
69th Judicial District  
Dalhart, Texas

Opinion No. WW-1300

Re: Whether the counties of a  
Judicial District can pay  
the salary of a Juvenile  
Probation Officer without  
special statutory enact-  
ments creating such office.

Dear Mr. Hunter:

By letter you request the opinion of this department, as follows: Can the counties of a Judicial District pay the salary of a Juvenile Probation Officer without special statutory enactments creating such office?

The statutes relating to juvenile officers or juvenile probation officers apply differently to judicial districts and counties, depending upon the population of counties, cities within counties, etc. This opinion assumes that your question has specific reference to the 69th Judicial District and the included counties.

The 69th Judicial District is composed of the counties of Deaf Smith, Oldham, Moore, Hartley, Sherman, and Dallam. Article 199(69), V.C.S. According to the Texas Almanac (1961-1962 Edition), the 1960 U.S. Bureau of Census lists the population of the counties of the 69th Judicial District as follows: Deaf Smith, 13,187; Oldham, 1,928; Moore, 14,773; Hartley, 2,171; Sherman, 2,605; and Dallam, 6,302. The total population of the district is 40,966.

Title 82, Vernon's Civil Statutes, Articles 5119-5143d, relates to juveniles. The only statute concerning the subject of juvenile officers and juvenile probation officers applicable to the 69th Judicial District, and included counties, appears to be that portion of Article 5142 reading as follows:<sup>1</sup>

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<sup>1</sup>/ Although not germane to the subject of this opinion, the salary provisions of this statute should be read in connection with Article 5142d, Vernon's Civil Statutes.

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". . . In counties having a population of less than eighty thousand (80,000) one (1) juvenile officer may be appointed by the Commissioners Court, when in its opinion, such officer is needed who shall receive compensation not to exceed Two Hundred Dollars (\$200) per month, and expenses not to exceed Two Hundred and Fifty Dollars (\$250) per year, . . .

". . . As a basis for reckoning the population of any county the preceding Federal Census shall be used."

Article 5142, V.C.S. was considered by the Supreme Court of Texas in Hamrick v. Simpler, 127 Tex. 428, 95 S.W.2d 357 (1936). In this case the statute was held conflicting and void; but later amendments were enacted removing the conflicting portions. Germane to this opinion, however, was that part of the Court's opinion relating to the authority of the Commissioners' Court to appoint a probation officer, in the absence of authorizing law.

In the words of the Court, at page 360:

"Since the above-quoted provision of the 1927 Act is void, no lawful authority existed, or now exists for Miss Simpler's appointment as probation officer of Potter County. This is true, regardless of who or what authority should attempt to make the appointment. If no lawful authority existed for her appointment, she could not be either a de jure or a de facto officer. If the statute is void, the office of probation officer of Potter County did not exist, and does not exist."

The principle of law is well established in this State that a statute giving authority to do a particular thing, and prescribing the mode of doing it, is mandatory in the sense that all other modes are excluded. Weaver v. Robinson, 114 Tex. 272, 268 S.W. 133, 141 (1924); Ellis v. Holcombe, 69 S.W.2d 449, 454 (Civ. App. 1934).

The authorities cited above indicate that the office of juvenile officer or juvenile probation officer does not exist in a county absent express legislative authorization. No statute can be located which authorizes counties of the 69th Judicial District to appoint a juvenile probation officer.

For these reasons, the opinion of this office is that the counties of the 69th Judicial District cannot legally pay the

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salary of a juvenile probation officer without first obtaining legislation specifically authorizing the establishment of the office in said counties.

SUMMARY

The counties of the 69th Judicial District cannot legally pay the salary of a juvenile probation officer because such office is not authorized by law.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
F. R. Booth  
Assistant

FRB:wb

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman  
Henry Braswell  
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REVIEWED FOR THE ATTORNEY GENERAL

BY: Houghton Brownlee, Jr.