



The Attorney General of Texas

October 18, 1978

JOHN L. HILL
Attorney General

Supreme Court Building
P.O. Box 12548
Austin, TX. 78711
512/475-2501

701 Commerce, Suite 200
Dallas, TX. 75202
214/742-8944

4824 Alberta Ave., Suite 160
El Paso, TX. 79905
915/533-3484

723 Main, Suite 610
Houston, TX. 77002
713/228-0701

806 Broadway, Suite 312
Lubbock, TX. 79401
806/747-5238

4313 N. Tenth, Suite F
McAllen, TX. 78501
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205
512/225-4191

An Equal Opportunity
Affirmative Action Employer

Honorable Henry Wade
Criminal District Attorney
Sixth Floor, Records Building
Dallas, Texas 75202

Opinion No. H- 1259

Re: Whether a county treasurer is authorized to receive fees earned by his services to levee improvement districts.

Dear Mr. Wade:

You ask whether the County Treasurer of Dallas County is entitled to receive the fees prescribed by section 57.066 of the Texas Water Code. Section 57.066 provides that "[t]he treasurer is entitled to receive as compensation . . . not more than one-fourth of one percent of all money received by him . . ." in performing his duties for a levee improvement district created pursuant to section 57.011, et. seq., of the Water Code.

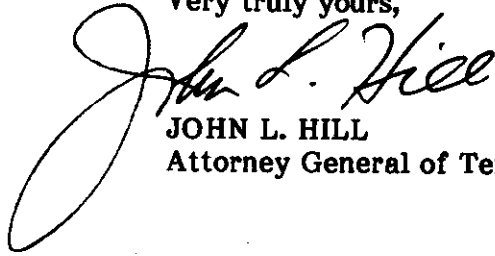
Article XVI, section 61 of the Texas Constitution states that ". . . all county officers in counties having a population of twenty thousand (20,000) or more, . . . shall be compensated on a salary basis." The purpose of this section was to "abolish the fee system of compensating named officers and placing them on a salary basis." Banks v. State, 362 S.W.2d 154, 155 (Tex. Civ. App. — Austin 1962, writ ref'd); see V.T.C.S. art. 3912k, § 5.

We believe that it is clear that the compensation provided for in section 57.066 of the Water Code constitutes a fee rather than a salary. See Greer v. Hunt County, 249 S.W. 831 (Tex. 1923) (salary is a fixed amount, while a fee is a contingent amount). Similar arrangements have been held unconstitutional. Wichita County v. Robinson, 276 S.W.2d 509 (Tex. 1954); Attorney General Opinions H-202 (1974); S-70 (1953); V-743 (1948).

S U M M A R Y


The County Treasurer of Dallas County is prohibited by article XVI, section 61 of the Texas Constitution from receiving the fees provided for in section 57.066 of the Water Code.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant
C. ROBERT HEATH, Chairman
Opinion Committee

jsn