



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

**JOHN L. HILL**  
ATTORNEY GENERAL

April 7, 1975

The Honorable Joe Resweber  
Harris County Attorney  
Harris County Courthouse  
Houston, Texas 77002

Letter Advisory No. 93

Re: Entitlement of a county employee, who is an attorney, to his regular county salary and to a fee authorized by a court for representation of an indigent defendant.

Dear Mr. Resweber:

You have asked the following question:

Where the salaried, full-time administrative assistant to the County Judge, who is a licensed attorney, has been appointed by a Court to represent an indigent, is the employee entitled to be paid his regular salary in addition to the fee authorized by the Court for a day in which he makes an appearance in court to represent the indigent?

We do not believe appointment by a judge as the legal representative of an indigent defendant in a criminal case is a civil office of emolument within the proscription of article 16, sections 33 and 40 of the Texas Constitution.

In Letter Advisory No. 63 (1973), we said that one requisite of classification as a civil officer involves public employment which is continuing and not intermittent or occasional in nature.

Where a lawyer has been appointed to represent a person in one case, the duties cast upon him by the court appointment are intermittent and occasional in nature, and therefore, he does not occupy any civil

office within the meaning of article 16, section 40 by reason of such an appointment. The position of the appointed attorney may fall short of "civil office" requirements in other areas too, but it is not necessary to decide that question here.


We have found no law which makes it illegal per se for a county employee who is a lawyer to be paid a fee pursuant to an unsolicited appointment as counsel for an indigent under article 26.04, Code Crim. Proc. Compare article 26.06, Code Crim. Proc. Williams v. State, 321 S. W. 2d 72 (Tex. Crim. App. 1958), cert. denied, 359 U.S. 930 (1959). Ex parte Reece 417 S. W. 2d 587 (Tex. Crim. App. 1967); Also compare Attorney General Opinion H-329 (1974) which was based, inter alia, on a specific statutory provision relating to fees paid to elected county officials.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
\_\_\_\_\_  
DAVID M. KENDALL, First Assistant

  
\_\_\_\_\_  
C. ROBERT HEATH, Chairman  
Opinion Committee

lg