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January 20, 1939

Hon. Maurice Bullock
County Attorney
Fort Stockton, Texas

Dear Mr. Bullock:

Opinion No. 0-125
Re: Salary of deputy sheriff who
is rural mail carrier, fees
of peace officer who is em-
ployed by city and county and
ex officio fees of Justice of
the Peace.

Your request for an opinion on three questions as
hereinafter stated has been received by this office. Your
questions are as follows:

"1. Is it lawful for the Sheriff to employ
and pay a salary to a Deputy who is at the same
time employed as a rural mail carrier for the
United States?

"2. Is it lawful for the County to pay part
of the salary of a Peace Officer also employed by
the City of Fort Stockton?

"3. Is it lawful for the County to pay the
various Justices of the Peace ex officio salaries
in addition to their fees of office."

In reply to the above, I am answering your questions
in their numerical order.

1. Section 741 of the Postal Laws and Regulations
of 1913, provides:

"That a rural mail carrier shall not hold any
state, county, municipal or a township office."

*overruled
by LA-83*

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The case of Groves vs. Borden, 84 SE 1042, Holds:

"A rural mail carrier appointed by the Postmaster General, a member of the cabinet and head of his department is an officer."

The cases, Murray vs. State, 67 SW (2nd) 274; State vs. Brooks, 42 Texas 62 and Travis vs. Harris, 13 Texas 507, hold that a deputy sheriff is a public officer.

Article 14, Section 2 of the United States Constitution and Article 16, Section 40 of the State Constitution prohibits a person from holding two incompatible offices.

In view of the foregoing authorities, your first question must be answered in the negative.

2. The Commissioners' Court may employ an officer of the city to perform services which are not required of him by law and may contract to pay him additional compensation therefor. However, the Commissioners' Court has no authority to pay such officer for duties performed which are required of him by law. Lattimore vs. Tarrant County, 124 SW 205. Texas Jurisprudence, Vol. 34, page 535, Section 117.

You are respectfully advised that it is unlawful for the county to pay a peace officer of the City of Fort Stockton for services rendered by him for the county other than those not required of him by law.

3. Article 3695 authorizes the Commissioners' Court to allow an officer compensation for ex officio services provided that such compensation, together with fees retained by him, does not amount to more than the maximum fee allowed by law.

On November 9, 1928, the Hon. H. Grady Chandler, Assistant Attorney General, rendered an opinion holding in effect that Justices of the Peace may be paid ex officio compensation.

You are respectfully advised that the Commissioners' Court may pay ex officio salaries to Justices of the Peace provided that such compensations together with the fees re-

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tained by them does not exceed the maximum fee allowed by law.

Trusting that the foregoing answers your inquiries,
I remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Arnell Williams*
Assistant

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APPROVED:

Gerald C. Moore
ATTORNEY GENERAL OF TEXAS

7/18/39