



PLEASE ADVISE YOUR COUNTY TREASURER OF THIS OPINION  
**THE ATTORNEY GENERAL**  
**OF TEXAS**

R-480

PRICE DANIEL  
ATTORNEY GENERAL

AUSTIN 11, TEXAS

June 2, 1947

Hon. L. L. Roberts  
County Auditor  
Hutchinson County  
Stinnett, Texas

Opinion No. V-231

Re: Construction of H. B.  
258, Acts of the 50th  
Legislature, 1947 -  
Maximum compensation  
of County Treasurer

Dear Sir:

Your request for an opinion from this Department on the above subject matter is as follows:

"Chapter 40, H. B. 258, amending Article 3943, R.C.S., 1925, provides in (b) the Commissioners Court may increase the compensation allowed the County Treasurer an additional amount not to exceed twenty-five per cent. The amount of the 25% increase here in Hutchinson County would be \$500.00.

"Should the County Treasurer be allowed for the Year 1947 the \$500.00 increase allowed by this Act, or only the proportionate part that the time after this Act becomes effective until the close of the Year 1947, bears to the entire year of 1947?"

Hutchinson County has a population of 19,069 according to the 1940 Federal census, and we are informed by the Comptroller's office that its county officials are compensated on a fee basis. Therefore, H. B. No. 258, Acts of the Fiftieth Legislature, is applicable to Hutchinson County.

H. B. No. 258, Acts of the 50th Legislature, 1947, p. 52, reads as follows:

"An Act amending Article 3943, Revised Civil Statutes of Texas, 1925,

as amended, allowing additional compensation for county treasurers; repealing all laws in conflict; and declaring an emergency.

**"BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

"Section 1. That Article 3943, Revised Civil Statutes of Texas, 1925, as amended, be and the same is hereby amended by adding thereto provisions allowing additional compensation for county treasurers; so that the same shall hereafter read as follows:

"(a) The commissions allowed to any county treasurer shall not exceed Two Thousand Dollars (\$2,000) annually; provided, that in all counties in which the assessed value of the property of such counties shall be One Hundred Million Dollars (\$100,000,000) or more as shown by the preceding assessment roll, the treasurers thereof shall receive as their commissions a sum not exceeding Two Thousand, Seven Hundred Dollars (\$2,700) annually; provided, that in all counties having a population of not less than seventy-five thousand (75,000) inhabitants, and not more than eighty thousand (80,000) inhabitants, according to the last preceding Federal census, in which counties, road or road and bridge bonds in the amount of Six Million Dollars (\$6,000,000) or more and flood protection bonds in the amount of One Million Dollars (\$1,000,000) or more have been voted by the people, the treasurers thereof shall receive as their commissions a sum not to exceed Two Thousand Seven Hundred Dollars (\$2,700) annually; and, shall be allowed an assistant at a salary not to exceed One Thousand, Two Hundred Dollars (\$1,200) annually; provided, that in all counties having a population of one hundred and fifty thousand (150,000) inhabitants or more, and less than two hundred and ten thousand (210,000) inhabitants, according to the last preceding Federal Census, the treasurers thereof shall receive as their commissions a sum not exceeding Two Thousand, Seven Hundred Dollars (\$2,700) annually, and shall be allowed an assistant at a salary not to exceed One Thousand Dollars (\$1,000)

per annum; provided, that in all counties containing a population of not less than forty-two thousand, one hundred (42,100) inhabitants nor more than forty-two thousand, two hundred and fifty (42,250) inhabitants, according to the last preceding Federal Census, and that in all counties containing a population of not less than forty-five thousand (45,000) inhabitants nor more than forty-seven thousand (47,000) inhabitants, according to the last preceding Federal Census, the commissions and compensation to be paid to the county treasurers in said Counties shall be Three Thousand, Six Hundred Dollars (\$3,600) per annum, payable in twelve (12) equal monthly installments, and such compensation shall be fixed by the Commissioners Court of said Counties.

"(b) The Commissioners Court is hereby authorized, when in their judgment the financial condition of the county and the needs of the county treasurer justify the increase, to enter an order increasing the compensation of the county treasurer in an additional amount not to exceed twenty-five per cent (25%) of the sum allowed under the law for the fiscal year of 1944, provided the total compensation authorized under the law for the fiscal year 1944 did not exceed the sum of Three Thousand, Six Hundred Dollars (\$3,600)."

"Sec. 2. All laws or parts of laws in conflict with the provisions of this Act are hereby expressly repealed. . .

"Passed the House, February 13, 1947: Yeas 125, Nays 3; House concurred in Senate amendments, March 10, 1947, by a viva voce vote; passed the Senate, as amended, February 27, 1947. Yeas 18, Nays 6.

"Approved March 13, 1947.

"Effective 90 days after date of adjournment." (Underscoring ours)

Article III, Section 39, of our State Constitution provides:

"No law passed by the Legislature, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency, which emergency must be expressed in a preamble or in the body of the act, the Legislature shall, by a vote of two-thirds of all the members elected to each House, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journals."

It will be noted that H. B. 258 passed the Senate by a vote of 18 to 6 which was not the required two-thirds vote of the elected members of the Senate. Therefore, the effective date of H. B. 258, Acts of the 50th Legislature, 1947, is ninety days after date of adjournment of the 50th Legislature.

In construing S. B. 123, Acts of the 49th Legislature, (an act which contains practically the identical provisions of H. B. 258, Acts of the 50th Legislature, but applicable to different officials) this Department has consistently held that where S. B. 123 is applicable, the Commissioners' Court is authorized when in their judgment the financial condition of the county and the needs of the officers justify the increase, to enter an order raising the maximum compensation allowed by law to an amount not exceeding twenty-five (25%) per cent of the sum allowed for the fiscal year 1944.

Therefore, it is the opinion of this Department that upon the effective date of H. B. 258, Acts of the 50th Legislature, (90 days after adjournment) the Commissioners' Court of Hutchinson County will be authorized to increase the compensation of the County Treasurer of said County in an additional amount not to exceed twenty-five (25%) per cent of the maximum sum allowed under the law for the fiscal year 1944; provided the total compensation authorized under the law for the fiscal year 1944 did not exceed \$3600.00. In other words, it allows the Commissioners' Court to raise by twenty-five (25%) per cent the maximum amount of lawful commissions the county

treasurer may retain. Any increase in compensation for the year 1947, however, must be in the same proportion as the balance of the year relates to the total annual increase that may be made under H. B. 258. See our Opinion No. 0-6576, a copy of which we are herewith enclosing.

In connection with the foregoing, we direct your attention to Article 689a-11, V.C.S., which is in part as follows:

"When the budget has been finally approved by the Commissioners' Court, the budget, as approved by the Court, shall be filed with the Clerk of the County Court, and taxes levied only in accordance therewith, and no expenditure of the funds of the county shall thereafter be made except in strict compliance with the budget as adopted by the Court. Except that emergency expenditures, in case of grave public necessity, to meet unusual and unforeseen conditions which could not, by reasonably diligent thought and attention, have been included in the original budget, may from time to time be authorized by the Court as amendments to the original budget. In all cases where such amendments to the budget is made, a copy of the order of the Court amending the budget shall be filed with the Clerk of the County Court, and attached to the budget originally adopted."

#### SUMMARY

Upon the effective date of H. B. 258, Acts of the 50th Legislature, 1947, (90 days after date of adjournment of the 50th Legislature) the Commissioners' Court of Hutchinson County (operating on a fee basis) is authorized to increase the maximum amount of lawful commissions the County Treasurer may retain in an additional amount not to exceed 25% of the maximum sum allowed under the law for the fiscal year 1944. Any increase in compensation for the year 1947 must be in the same proportion as the balance of the year relates to the total annual in-

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crease that may be made, and must be in compliance with the Budget Law. Art. 689a-11, V.C.S.

Very truly yours

ATTORNEY GENERAL OF TEXAS

JR:djm:wb

Enclosure

By

*John Reeves*  
John Reeves  
Assistant

APPROVED

*Rice Daniel*  
ATTORNEY GENERAL