



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

February 28, 1972

Overruled by H-619 & H-985
Walter Confield

Honorable Ted Butler
Criminal District Attorney
Bexar County Courthouse
San Antonio, Texas 78204

Opinion No. M-1088

Re: Construction of Senate Bill
213, Acts 62nd Leg., R.S.
1971, Ch. 262, p. 1151 (Art.
2372h-6, V.C.S.).

Dear Mr. Butler:

Your request for an opinion asks the following question:

"Your opinion is requested as to whether deputies of county officials are 'Employees' within the definition of 'Employee' in Section 1 (3) of the Civil Service System-Creation, Dissolution, Etc.--Counties of 300,000 or More, Chapter 262, S.B. No. 213, 62nd Legislature, R.S., 1971. We refer to all deputies, but specifically those deputies of the following county officials: a.) County Clerk, b.) District Clerk, c.) Assessor and Collector of Taxes, d.) Auditor, e.) Treasurer, f.) Sheriff, and g.) Constables."

Senate Bill 213, Acts 62nd Legislature, R.S. 1971, Ch. 262, p. 1151 (Article 2372h-6, Vernon's Civil Statutes) provides for the creation of a county civil service system in counties having a population of 300,000 or more inhabitants. Section 1 defines "employee" as follows:

"(3) 'Employee' means any person who obtains his position by appointment and who is not authorized by statute to perform governmental functions in his own right involving some exercise of discretion, but does not include a holder of an office the term of which is limited by the Constitution of the State of Texas."

In the case of Murray v. Harris, 112 S.W.2d 1091 (Tex. Civ.App. 1938, error dism.), the court stated at page 1093:

"The statute conferring upon the sheriff the power to appoint deputies fixes no definite

term of office, but provides that the tenure shall be at the pleasure of the sheriff, which is tantamount to a provision that both the appointment and tenure are discretionary with him. . ."

It was thus held in Attorney General's Opinion WW-1191 (1961):

"Thus, it is clear that, under the provisions of Article 6869, the Sheriff has full power to appoint the deputies who will serve under him and also has full power to terminate their services at any time he may see fit. The term of a deputy sheriff is not fixed by statute and the power to 'hire' and 'fire' is an incident of the power of appointment given the sheriff. The office of deputy sheriff is therefore held only during the pleasure of the sheriff."

It is our opinion that the above holding is equally applicable to other deputies. Article 1938, Vernon's Civil Statutes, relating to deputy county clerks; Article 1898, relating to deputy district clerks; Article 7252, relating to deputy assessor-collectors of taxes; Article 1650, relating to assistant county auditors; Article 3943d, relating to assistants to the county treasurer; and Article 3902, relating to appointment generally of deputies, clerks and assistants.

In Attorney General's Opinion O-5341 (1943), it is stated:

"The term 'office' implies a delegation of a portion of the sovereign power to, and possession of, it by the person filling the office; a public office being an agency for the state, and the person whose duty it is to perform the agency being a public officer. The term embraces the idea of tenure, duration, emolument and duties, and has respect to a permanent public trust to be exercised in behalf of government, and not to a merely transient, occasional or incidental employment. A person in the service of the government who derives his position from a duly and legally authorized election or appointment, whose duties are continuous in their nature and defined

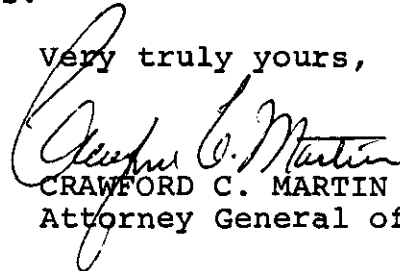
by rules prescribed by government, and not by contract, consisting of the exercise of important public powers, trusts, or duties, as a part of the regular administration of government, the place and the duties remaining, though the incumbent dies or is changed, every office in the constitutional meaning of the term implying an authority to exercise some portion of the sovereign power, either in making, executing or administering the laws. Mechem on Public Officers, §1-9."

In view of the foregoing authorities we agree with you that deputies of county officials are included in the definition of "employee" as defined in Subsection (3) of Section 1 of Senate Bill 213, Acts 62nd Legislature, R.S. 1971, Ch. 262, page 1151 (Article 2372h-6, Vernon's Civil Statutes).

S U M M A R Y

Deputies of county officials are "employees" within the meaning of Senate Bill 213, Acts 62nd Leg., R.S. 1971, Ch. 262, p. 1151 (Article 2372h-6, Vernon's Civil Statutes), creating a county civil service system in counties with a population of 300,000 or more inhabitants.

Very truly yours,



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APPROVED:
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