

**FEES AND
COMPENSATION OF
PUBLIC
OFFICIALS IN TEXAS, 1916**

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Fees and Compensation of Public Officials in Texas, 1916 by Worth S. Ray

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PREFACE.

The convenience of having at hand a small and compact book dealing with the particular subject in hand and containing exactly what you are looking for in the way of information on the law is generally recognized, and this compilation is intended to prove useful on that account, alike to public officials and attorneys.

It is a small venture and no attempt is made to exhaust the subject dealt with, but to handle only in its entirety the statute law pertaining to the subject of compensation and fees of office, as it has been built up in Texas. If the public officers of the State alone find it of use to them in their every-day affairs it will amply repay the author for the work and time expended on it.

WORTH S. RAY.

CONSTITUTIONAL PROVISIONS.

The different provisions of the Constitution in regard to the pay or compensation of the public officers of this State are as follows:

Referring to the Governor the Constitution says:

"He shall at stated times receive as compensation for his services an annual salary of four thousand dollars, and no more." Sec. 5, Art. 4.

Referring to the Lieutenant Governor the Constitution provides:

"The Lieutenant Governor shall, while he acts as President of the Senate, receive for his services the same compensation and mileage which shall be allowed to members of the Senate, and no more, and during the time he administers the government as Governor he shall receive in like manner the same compensation which the Governor would have received had he been employed in the duties of his office, and no more." Sec. 17, Art. 4.

With reference to the Secretary of State the Constitution provides that,

"He shall receive for his services an annual salary of two thousand dollars, and no more." Sec. 21, Art. 4.

With reference to the Attorney General the Constitution provides that,

"He shall receive for his services an annual salary of two thousand dollars, and no more, besides such fees as may be prescribed by law; provided, that the fees which he may receive shall not amount to more than two thousand dollars annually." Sec. 22, Art. 4.

With reference to the Comptroller of Public Accounts, the State Treasurer and the Commissioner of the General Land Office the Constitution provides that each of them shall

"Receive an annual salary of two thousand five hundred dollars, and no more."

And there is a further provision as to these officers that

"All fees that may be payable by law for any service performed by any officer specified in this section or in his office shall be paid when received into the State Treasury." Sec. 23, Art. 4.

With reference to the Supreme Judges the Constitution provides as follows:

"And shall each receive an annual salary of four thousand dollars until otherwise provided by law." Sec. 2, Art. 5.

With reference to the judges of the Court of Criminal Appeals the Constitution provides that

"Said judges shall have the same qualifications and receive the same salaries as the judges of the Supreme Court." Sec. 4, Art. 5.

With reference to the judges of the Courts of Civil Appeals the Constitution provides:

"And shall receive for their services the sum of three thousand five hundred dollars per annum until otherwise provided by law." Sec. 6, Art. 5.

With reference to district judges the Constitution provides:

"And shall receive for his services an annual salary of two thousand five hundred dollars until otherwise changed by law." Sec. 7, Art. 5.

With reference to district clerks, Section 9, of Article 5, creates this office for each county, but no reference is made to the amount of his compensation or how the same shall be paid.

With reference to county judges the Constitution provides that:

"He shall receive as a compensation for his services such fees and perquisites as may be prescribed by law." Sec. 15, Art. 5.

Section 19, Article 5, of the Constitution creates the offices of justices of the peace, constables and county commissioners, but there is no provision as to the amount or character of compensation or when and how it shall be paid.

As to county clerks the Constitution provides that he shall be clerk of the county and commissioners court and recorder of the county "whose duties, perquisites and fees of office shall be prescribed by the Legislature." Sec. 20, Art. 5.

With reference to county and district attorneys, the Constitution provides that:

"District attorneys shall receive an annual salary of five hundred dollars, to be paid by the State, and such fees, commissions and perquisites as may be provided by law. County attorneys shall receive as compensation only such fees, commissions and perquisites as may be prescribed by law." Sec. 21, Art. 5.

As to sheriffs the Constitution provides:

"Whose duties and perquisites and fees of office shall be prescribed by the Legislature," etc. Sec. 23, Art. 5.

With reference to county tax assessor, Section 14, of Article 8, creates the office, but it fails to state the amount or manner of paying his compensation.

With reference to the sheriff, Section 16, of Article 8, creates the

office and states that in addition to his other duties he shall be the collector of taxes, but providing that in counties having ten thousand inhabitants, to be determined by the preceding census, a collector of taxes shall be elected, but the Constitution does not provide the amount or the manner of paying the compensation of these officers named.

Section 44, of Article 16, creates the offices of county treasurer and county surveyor and provides, "and shall have such compensation as may be provided by law."

Section 44, of Article 3, of the Constitution has this general provision relative to the subject under consideration:

"The Legislature shall provide by law for the compensation of all the officers, servants, agents and public contractors not provided for in this Constitution, but shall not grant extra compensation to any officer, agent, or servant or public contractor after such public service shall have been performed or contract entered into for the performance of the same, nor grant by appropriation or otherwise any amount of money out of the treasury of the State to any individual on a claim, real or pretended, when the same shall not have been provided for by pre-existing law, nor employ anyone in the name of the State unless authorized by pre-existing law."

The above provisions of the Constitution are submitted as practically all of those provisions that will shed any light on the inquiry, and it will be noticed that with reference to some of the officers named the Constitution is silent as to the amount or the method of paying their compensation, while with reference to others it is stated to be an annual salary, and with reference to other fees, perquisites and commissions are provided for.

Each of these terms has in the course of time assumed a definite meaning. For instance, perquisites is "something gained by a place or office beyond the regular salary or fee." It was held to be used in this sense in the Constitution of Maryland, where it was provided for the compensation of clerks of courts in the city of Baltimore, directing that they shall be entitled "to no other perquisites or compensation." *Van Sant vs. State*, 53 Atl. Rep., 711, 96 Md., 110.

Fees, as used in connection with offices, means "a recompense prescribed by law for services performed by one in an official capacity." *City of Austin, vs. Johns*, 62 Texas, 179; *First Burrell Law Dictionary*, page 474; *First Bouvier Law Dictionary*, page 577.

The word "salary" means "an annual or periodical payment for services, a stipulated periodical recompense, a stipend, wages," *Indianapolis vs. Wasson*, 74 Ind., 133.

Webster defines "salary" to be "the recompense or consideration stipulated to be paid to a person for services, annual or periodical wages or pay."

"Salary is a fixed compensation which is paid at stated times."
Dane vs. Smith, 54 Ala., 47.

"The recompense or consideration stipulated to be paid by the year, as to governors, magistrates, etc." People vs. Meyer, 11 N. Y. Supp., 217, 25 Abb. N. C., 368.

"Commissions," as that term is used in connection with compensation to an officer, means "a percentage allowed by law on sums of money received or collected." Smith vs. Dunn, 8 Pac. Rep., 625, 68 Cal., 54.

The term "compensation" is comprehensive enough to include salary, fee, perquisites, commissions, wages or any other pay received by an officer for the services performed, and in its usual and ordinary acceptation applies not only to salaries but to compensation by fees for specific services or commissions upon moneys collected, etc. Commonwealth vs. Carter (Ky.), 55 S. W. Rep., 701.*

FEES CANNOT BE COLLECTED UNLESS THEY ARE ALLOWED BY STATUTE.

Unless the statute expressly provide for fees for the particular service performed by an officer, the courts have no power to fix a compensation for the services rendered. Wharton County vs. Ahldag, 84 Texas, 12; 19 S. W. Rep., 291. See James vs. Wilson, 7 Texas, 230.

PUBLIC OFFICERS CANNOT ASSIGN OR GIVE LIEN UPON UNEARNED FEES OF OFFICE.

It is contrary to public policy for a public officer to assign or give a lien upon his fees. Williams vs. Ford, 27 S. W. Rep., 722; State Nat. Bank vs. Fink, 24 S. W. Rep., 256; 86 Texas, 303.

*Extracts from Ruling of Attorney General B. F. Looney, January 27, 1913.

**FEES TO BE CHARGED BY THE SECRETARY OF STATE,
COMMISSIONER OF GENERAL LAND OFFICE, AND
OTHER OFFICERS TO FURNISH COPIES
AND CERTIFICATES.**

Article 3833. **Secretary of State, Commissioner of General Land Office and Other Officers, to Furnish Copies and Certificates.**—It shall be the duty of the Secretary of State, Commissioner of the General Land Office, Comptroller, Treasurer, Commissioner of Agriculture, Insurance, Statistics and History, Adjutant General, and Attorney General, to furnish any person who may apply for the same with a copy of any paper, document or record in their respective offices, and also to give certificates, attested by the seals of their respective offices, certifying to any fact or facts contained in the papers, documents or records of their offices, to any person applying for the same. [Act March 20, 1848; P. D. 3806.]