OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN, 11

GROVER SELLERS
ATTORNEY GENERAL

February 10, 1939

Hon. Fred Hartley
Assistant Criminal District Attorney
McLennan County
Waco, Texas

Dear Sir:

Opinion No. O-[illegible]
Re: Fees allowed as mileage to a constable transporting prisoner or prisoners to county jail.

The fact situation set forth in your letter of January 10th which has been received by this Department is synonymous with the following:

"What amount in fees is allowed a constable as mileage for conveying a prisoner, after conviction in a justice court for misdemeanor, twenty miles to the county jail?"

". . . . for conveying more than one person?"

Article 1065, Code of Criminal Procedure, annotated 1925, begins as follows:

"The following fees shall be allowed . . ."

Section 9 reads:

"For conveying a person, after conviction, to the county jail, for each mile, going and coming, by the nearest practicable route by private conveyance, 10¢ a mile or by railway 7½¢ a mile."

As far as can be determined, Section 9 of Article 1065 has not been construed by the courts of this State pertaining to your question.

As to the amount allowed as mileage for the conveying of one prisoner the language is plain and unambiguous in

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its meaning, allowing the officer 10¢ per mile, going and coming, by the nearest practicable route by private conveyance.

It is necessary to determine the legislative intent in answering the last part of your question as to mileage allowed where two or more such prisoners are conveyed in the same trip. Attention is called to the Acts of the 24th Legislature, 1895, at which time our present Sec. 9 of Article 1065, above quoted, was added. Prior thereto, no provision existed authorizing the mileage fees in misdemeanor cases.

We further call your attention to our present Article 1029 and Sec. 4 thereof which has to do with mileage fees for removing or conveying prisoners . . . ., applicable in felony cases. It will be noted that this section of Article 1029 contains the following provisions:

> ". . . . providing that where more than one prisoner is so conveyed or removed at the same time, in addition to the foregoing, he shall be allowed 8¢ per mile for each additional prisoner."

This part of Sec. 4 of Article 1029, expressly providing mileage for additional prisoners in felony cases, was added by the Acts of the 21st Legislature and has been incorporated in all amendments, revisions and recodifications of the laws since that date. It is not believed that the Legislature, in allowing mileage for each additional prisoner in Article 1029, Sec. 4, as applicable to felony cases, intended to deny mileage for each additional prisoner conveyed in one trip under the provisions of Sec. 9 of Article 1065, C. C. P. 1925, applicable to misdemeanor cases.

It is therefore the opinion of this Department and you are respectfully advised that under the provisions of Article 1065, Sec. 9, such officer is allowed 10¢ per mile, going and coming, for conveying one prisoner and 10¢ per mile

going and coming for each additional prisoner conveyed in the same trip.

Very truly yours

APPROVED:

ATTORNEY GENERAL OF TEXAS

By

ATTORNEY GENERAL OF TEXAS

/s/ Wm. J. R. King
Assistant

WmK:AW
PW

WJF