



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

January 18, 1939

Honorable Thomas A. Wheat
County Attorney
Liberty County
Liberty, Texas

Dear Mr. Wheat:

Opinion No. O-106
Re: Constable's fees in connection with highway patrol arrests.

Your request for an opinion on the following question has been received by this office.

Where an arrest is made by the Highway Patrol, constable not being present, and defendant is convicted, is the constable of that precinct entitled to collect the fee of \$3.00?

In reply to your question, you are respectfully advised that it is the opinion of this office that the constable is not entitled to a fee in such cases.

Article 1065, Code of Criminal Procedure, provides in part as follows:

"The following fees shall be allowed the sheriff, or other peace officer performing the same services in misdemeanor cases, to be taxed against the defendant on conviction:

- "1. For executing each warrant of arrest or capias, or making arrest without warrant, two dollars.
- "2. For summoning each witness, seventy-five cents.
- "3. For serving any writ not otherwise provided for, one dollar.
- "4. For taking and approving each bond, and returning the same to the courthouse, when necessary, one dollar and fifty cents.
- "5. For each commitment or release, one dollar.
- "6. Jury fee, in each case where a jury is actually summoned, one dollar."

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We see from this statute that each fee is allowed for a specific service performed. If the Highway Patrol makes the arrest and the constable does not participate in the arrest in any manner, he is not entitled to a fee in the case. The constable is only entitled to fees for services he performs as set out in Article 1065, Code of Criminal Procedure.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Claud O. Boothman

Claud O. Boothman
Assistant

COB:N

APPROVED

ATTORNEY GENERAL OF TEXAS

O.K.
G.R.L.