



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

May 12, 1939

Hon. D. Richard Voges  
County Attorney  
Wilson County  
Floresville, Texas

Dear Sir:

Opinion No. G-677

Re: Effect of resolution passed  
by Commissioners' Court, and  
whether or not allowing pris-  
oners convicted of misdemean-  
ors to labor on courthouse  
lawn and as janitor complies  
with article 1055.

Your letter of April 22nd has received the attention of this Department. Our attention is called to a resolution which is set forth therein passed by the Commissioners' Court, and which in its preamble recites certain facts existing and after calling attention to the provisions of articles 793 and 794, said resolution merely in effect provides that the provisions of article 794 of the Code of Criminal Procedure be exercised and fully complied with. We quote the paragraph following the said resolution set forth in your letter, as follows:

"By virtue of the above resolu-  
tion and article the prisoners convict-  
ed of misdemeanors have not been required  
or forced, but with their consent could  
perform manual labor by assisting the  
janitor in sweeping and washing the  
courthouse, keeping up the yard and  
lawn of the court yard by mowing grass,

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planting shrubbery, and in general keeping the courthouse and lawn in good condition, together with other manual labor in and about the courthouse, jail and lawn.

"Under this set up, are the officers entitled to one-half of the costs as provided for in article 1055, reads as follows:

(Art. set forth)

as the same existed prior to its amendment by Acts 1937, 45th Legislature, page 1325."

As this Department has heretofore ruled that the amendment by the Acts 1937, 45th Legislature, to article 1055 is unconstitutional, article 1055 as incorporated in the Code of Criminal Procedure, 1925, is still in force and effect and which article reads as follows:

"The county shall be liable to each officer and witness having costs in a misdemeanor case for only one-half thereof where the defendant has satisfied the fine and costs adjudged against him in full by labor in the workhouse, on the county farm, on the public roads or upon any public works of the county; and to pay such half of such legal costs as may have been so taxed, not including commissions, the county judge shall issue his warrant upon the county treasurer in favor of the proper party, and the same shall be paid out of the road and bridge fund or other funds not otherwise appropriated."

It will be noted that article 793, Code

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of Criminal Procedure, and is substantially the same as the amended article 793, insofar as same affects your county, provides that where a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the workhouse, or on the county farm, or public improvements of the county, as provided in the succeeding article, or, if no workhouse, farm or improvements, he shall be imprisoned in jail . . .

Article 794, and paragraph numbered (1) provides that each Commissioners' Court may provide for the erection of a workhouse and the establishment of a county farm in connection therewith for the purpose of utilizing the labor of said parties so convicted. Section (5) under said article provides that they shall be put to work upon the public roads, bridges or other public works of the county when their labor cannot be utilized in the county workhouse or county farm.

There does not seem to be any authority under the provisions of article 794 for the resolution set forth in your letter as said resolution does not purport to be in pursuance to paragraph numbered (1) of article 794, supra. We presume, however, that such order or resolution was designed to carry out the provisions under section (5), above referred to, under which provisions of the statute persons so convicted are required to work upon the public roads, bridges and other public works of the county when such work is needed to be done. This brings us to the only material question under your request and that is, whether or not such manual labor as working as janitor in the courthouse and around the courthouse yard or lawn meets the requirements of article 1035, which provides for labor in the workhouse, on the

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county farm or on the public roads or upon any public works of the county. It is evident that the last field of labor set forth above, "public works" of the county, in reading the above mentioned statutes together, is synonymous with the words "public improvements" of the county as mentioned in article 793, supra. We do not believe that such casual labors mentioned in your letter as janitor work in and about the courthouse and upkeep and maintenance of the courthouse lawn and in and around the jail, meet the requirements of article 1055, supra, or come within the purview of the statutes as labor "upon any public works of the county."

It is therefore, the opinion of this Department that county officers are not entitled to one-half the costs as provided for in article 1055, where under the provisions of article 793 and 794, Code of Criminal Procedure, 1925, persons convicted of misdemeanors and are unable to pay fine and costs, are permitted to work as janitor around the courthouse, jail, maintain and keep the courthouse lawn - same not being within the meaning of "public works" of the county.

Trusting the above answers your request, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By



Wm. J. King  
Assistant

WmK:AM

APPROVED:

*Gerald C. Mann*  
ATTORNEY GENERAL OF TEXAS

