



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

May 13, 1939

Hon. Charles R. Martin
County Auditor
Harrison County
Marshall, Texas

Dear Sir:

Opinion No. O-703
Re: Whether Justice of the Peace on
fee basis entitled to such delin-
quent fees accrued and unreported
as required article 3897, Revised
Civil Statutes, 1925, as amended.

This department has considered your re-
quest for an opinion as contained in your letter
of April 26th, wherein you call our attention to
an opinion formerly rendered from the Attorney Gen-
eral's Department to Honorable Benjamin Woodall,
County Attorney of Harrison County, Texas and which
opinion, written by Honorable Joe J. Alsup, Assis-
tant Attorney General of Texas, was rendered on the
31st day of March, 1937. We further acknowledge
receipt of a copy of the above opinion, which you
have furnished for our consideration.

As the above opinion covers identically
the same questions raised in your letter of April
26th, and the correctness of said opinion is ques-
tioned, permit us to set forth the last three para-
graphs of your letter containing facts upon which
your request is based:

"Precinct Officers in Harrison County
are compensated on a fee basis. These
officers filed their annual reports for
the year 1937 and it would seem that some
of them failed to list any fees as having

been earned and not collected for the year 1937. Their reports would indicate that none of them earned and collected the maximum for the year 1937.

"In checking over their annual reports for the year 1938, I find that some of them collected during the year 1938 fees that had been actually earned in 1937, but, as stated above, they were not listed in their annual report for the year 1937 as having been earned and not collected. Some of these delinquent fees earned in 1937 and collected in 1938 were examining trial fees, where indictments had been returned and filed during the year 1937.

"QUESTION: Would these precinct officers be entitled to collect and retain these delinquent fees which had not been reported as delinquent for the year 1937, some of which have already been paid to them during the year 1938, and some of the fees are still due and uncollected, or do these fees belong to the county by reason of the officer's failure to report them as having been earned and uncollected for the year 1937?"

It is interesting to note that the files of this department have disclosed an opinion rendered to Hon. Moore Lynn, State Auditor, on January 23, 1932, written by Honorable Everett F. Johnson, Assistant Attorney General, contra to the view held by Mr. Alsop in the above opinion referred to, to the effect that the retention of delinquent fees under article 3892 in addition to other requirements therein contained, was conditioned upon their being reported. Article 3897, Acts 1925, Forty-fourth Legislature, Second Called Session, Chapter 467, reads as follows:

"Each district, county and precinct officer, at the close of each fiscal year (December 31st) shall make to the district

court of the county in which he resides a sworn statement in triplicate (on forms designed and approved by the State Auditor) a copy of which statement shall be forwarded to the State Auditor by the clerk of the district court of said county within thirty (30) days after the same has been filed in his office, and one copy to be filed with the county auditor, if any; otherwise said copy shall be filed with the Commissioners' Court. Said report shall show the amount of all fees, commissions and compensations whatever earned by said officer during the fiscal year; and secondly, shall show the amount of fees, commissions and compensations collected by him during the fiscal year; thirdly, said report shall contain an itemized statement of all fees, commissions and compensations earned during the fiscal year which were not collected, together with the name of the party owing said fees, commissions and compensations. Said report shall be filed not later than February 1st following the close of the fiscal year and for each day after said date that said report remains not filed, said officer shall be liable to a penalty of Twenty Five (\$25.00) Dollars, which may be recovered by the county in a suit brought for such purposes, and in addition said officer shall be subject to removal from office."

The above statute reads the same as the amended Acts of 1930, Forty-first Legislature, Fourth Called Session, chapter 20, at which session of the Legislature our present article 3892 was enacted, and which reads as follows:

"Any officer mentioned in this chapter who does not collect the maximum amount of his fees for any fiscal year and who reports delinquent fees for that year, shall be entitled to retain, when collected, such part of such delinquent fees as is sufficient to complete the maximum compensation authorized by articles 3883, 3883-A, and 3886 for the

year in which delinquent fees were charged, and also retain the amount of excess fees authorized by law, and the remainder of the delinquent fees for that fiscal year shall be paid as herein provided for when collected; provided, the provisions of this article shall not apply to any officer after one year from the date he ceases to hold the office to which any delinquent fee is due, and in the event the officer earning the fees that are delinquent has not collected the same within twelve months after he ceases to hold the office, the amount of fees collected shall be paid into the county treasury. Provided, however, that nothing in this Act precludes the payment of ex officio fees in accordance with Title 61 of the Revised Civil Statutes of Texas, 1925, as part of the maximum compensation. Provided, that any change made in this article by this Act shall not apply to fees heretofore earned."

Statutes providing fees for public officers are strictly construed. Under the provisions of the above statutes, the officer is required to make a sworn report at the close of each fiscal year and such report among other things, shall contain an itemized statement of all fees, commissions and compensations earned during the fiscal year which were not collected, together with the name of the party owing said fees, commissions, and compensations. This requirement found in Article 3897, supra, contains the report required to be made by such officers to which the provision contained in article 3892 undoubtedly refers. We quote from the opinion of the court of Civil Appeals rendered in Bitter v. Bexar County, 266 S.W. 224:

"The only manner provided by law for giving notice to the proper authorities of the collection of fees, and the purpose for which they were collected, is for the officers collecting such fees to make sworn reports thereof. Upon such reports, settlements are made annually with the county and from such reports the amount due the county as excess fees is ascertained. It was found

by the trial court that the appellant made annual reports purporting to cover all fees collected and received by him during the fiscal year in question these reports were sworn to as being complete and correct, but none of the fees sued for were included in such reports. The failure to disclose in his reports, at some period of time before the expiration of his term of office, the essential facts, was a plain violation of the law; and whether intentional or otherwise he was withholding material information from the county, and it does not lie in appellant's mouth to say the county had oral notice or had approved his contention."

The Legislature, being authorized to fix and determine the fees allowed to public officers may impose necessary conditions, limitations and restrictions consistent with their collection and disposition. Such provisions afford protection to the county as well as to the officers themselves and provide means of readily checking up and following the sources of all funds belonging to the county or to the officer ultimately. Such examining fees in question become due and payable after indictment of the defendant for the offense for which he was charged in the examining court, (see article 1020, C. C. P., 1925, as amended). Such fees come within the provisions of Articles 3892 and 3897, supra, and are required to be reported by the officer. It is our view that the requirement that such fees be included in the officers sworn report, being mandatory, is a condition precedent to allowing him to retain such fees as allowed by article 3892 and failing to do so, such officer has not met the requirements of said statute. We overrule the opinion of Hon. Joe J. Alsup, above referred to.

It is, therefore, the opinion of this department that the provisions of article 3897, being mandatory, must be complied with before the Justice of the Peace can demand or be entitled to retain under the provisions of article 3892, as a matter of right, such delinquent examining trial fees payable, and qualify under the provisions thereof.

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Trusting the above answers your inquiry, we
remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (Signed) Wm. J. R. King
Assistant

WmK:OMB

APPROVED:

(Signed) Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved: Opinion Committee
By REK, Chairman