



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

May 30, 1939

Honorable Stephen P. Hebert
County Attorney, DeWitt County
Cuero, Texas

Dear Sir:

Opinion No. 0-888

Re: Is a sheriff or constable entitled to his usual 5% collection fee on the trial fee in the justice court, as well as on the fine in said court?

Your request for opinion on the above stated question has been received by this department.

Article 951, Code of Criminal Procedure of Texas, reads as follows:

"The sheriff or other officer, except a justice of the peace or his clerk, who collects money for the State or county, except jury fees, under any provision of this Code, shall be entitled to retain five per cent thereof when collected."

Article 1074, Code of Criminal Procedure of Texas, reads as follows:

"In each case of conviction in a county court, or a county court at law, whether by a jury or by a court, there shall be taxed against the defendant or against all defendants, when several are held jointly, a trial fee of five dollars, the same to be collected and paid over in the same manner as in the case of a jury fee, and in the Justice Court the trial fee shall be the sum of four dollars."

Article 949, Code of Criminal Procedure of Texas, reads as follows:

"Money collected by an officer upon recognizances, bail bonds and other obligations recovered upon in the name of the State under any provision of this Code, and

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all fines, forfeitures, judgments and jury fees, collected under any provision of this Code, shall forthwith be paid over by the officers collecting the same to the county treasurer of the proper county, after first deducting therefrom the legal fees and commissions for collecting the same."

On February 4, 1918, this department held in a conference opinion written by Hon. C. W. Taylor, Assistant Attorney General, that the sheriff is entitled to 5% commission on trial fees which he actually collected.

On April 5, 1932, this department held in a letter opinion written by Hon. Willis Gresham, Assistant Attorney General, that the sheriff was entitled to a commission of 5% on all trial fees actually collected by him.

You are respectfully advised that in view of Article 951, C.C.P. of Texas, it is the opinion of this department that a sheriff or constable would be entitled to his usual 5% collection fee on the trial fee in the justice court, if he actually collected the trial fee, as well as on the fine in said court, if he actually collected the fine in said court.

Trusting that this answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By (signed)
Wm. J. Fanning
Assistant

WJF:AW

APPROVED:

Gerald C. Mann (signed)
ATTORNEY GENERAL OF TEXAS

(Stamped:) Approved
Opinion Committee
By R.W.F., Chairman