



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. David Cole
County Auditor
Stephens County
Breckenridge, Texas

Dear Sir:

Opinion No. 0-1059

Re: What fees should the clerk of the district court in Stephens County receive on felony cases on which indictments were duly returned and filed and which were pending on the docket of the court prior to the preceding presidential election?

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

Your letter reads in part as follows:

"In this (Stephens) County at the last preceding presidential election more than 3,000 votes were cast, which was the first time in the history of the county the vote had exceeded said 3,000 mark.

"The clerk of the district court of this county has always received Ten Dollars final disposition fee in felony cases prior to said last presidential election, since which time however said clerk has received Eight Dollars in accordance with said above captioned Article.

"And now the question on which I desire a ruling on is as follows:

"In felony cases on which indictments were

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duly returned and filed, and which cases were pending on the docket of said court, and work and duties practically completed by the clerk in reference to such cases, prior to said preceding presidential election at which more than 3,000 votes were cast, is such clerk entitled to receive only Eight Dollars as a final disposition fee, or shall he be entitled to receive Ten Dollars as such final disposition fee, bearing in mind however such cases were not finally disposed of by the court until after the election in question."

Article 1026, C. C. P. reads as follows:

"In each county where there have been cast at the preceding presidential election 3,000 votes or over, the district clerk or criminal district clerk shall receive the following fees: Eight dollars for each felony case finally disposed of without trial or dismissed, or tried by jury whether the defendant be acquitted or convicted; eight cents for each one hundred words in each transcript on appeal or change of venue; eighty cents for entering judgment in habeas corpus cases, and eight cents for each one hundred words for preparing transcript in habeas corpus cases. In no event shall the fees in habeas corpus cases exceed eight dollars in any one case. In each county where less than 3,000 such votes have been so cast, such clerk shall receive ten dollars for each felony case so disposed of, and ten cents for each one hundred words in such transcripts, and one dollar for entering judgment in each habeas corpus. The district clerk of any county shall receive fifty cents for recording each account of the sheriff."

Article 1027, C. C. P. reads as follows:

"In all cases where a defendant is indicted for a felony but under the indictment he may be convicted of a misdemeanor or a felony, and the

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punishment which may be assessed is a fine, jail sentence or both such fine and imprisonment in jail, the State shall pay no fees to any officer, except where the defendant is indicted for the offense of murder, until the case has been finally disposed of in the trial court. Provided the provisions of this Article shall not be construed as affecting in any way the provisions of Article 1019, Code of Criminal Procedure, as amended by Chapter 265, General Laws, Regular Session, Forty-second Legislature; provided this shall not apply to examining trial fees to County Attorneys and/or Criminal District Attorneys."

We quote from Texas Jurisprudence, Vol. 34, page 508, as follows:

"Statutes prescribing fees for public officers are strictly construed; and hence a right to fees may not rest in implication. Where this right is left to construction, the language of the law must be construed in favor of the government. Where a statute is capable of two constructions, one of which would give an officer compensation for his services in addition to his salary and the other not, the latter construction should be adopted. It is no concern of an officer that the Legislature may have been toward other officers more liberal than toward him in the matter of compensation for services; nor does this fact justify the courts in upholding his claim for compensation for services as against a fair and reasonable interpretation of the statutes. In applying fee statutes and ascertaining the intent of the Legislature and the meaning of the statute, the usual methods and rules of interpretation are applicable." (Also see the cases of McCalla vs. City of Rockdale, 246 SW 654; Binford vs. Robinson, 244 SW 807; Eastland County vs. Hazel, 288 SW 518; Madden vs. Hardy, 50 SW 926.)

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Under the above quoted statutes, the district clerk is entitled to no fee except where the defendant is indicted for the offense of murder, until the case has been finally disposed of in the trial court. It is immaterial as to when the indictment was returned in the case filed. The clerk is not entitled to his fee until there is a final disposition of the case in the trial court.

In view of the foregoing authorities, you are respectfully advised that it is the opinion of this department that the district clerk in Stephens County is entitled to Eight Dollars for each felony case on which indictments were duly returned and filed when such cases are finally disposed of in the trial court, regardless of whether the indictments were returned and filed before or after the last preceding presidential election.

Trusting that the foregoing answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

APPROVED JUL 8, 1939
AW:AC

[Signature]
FIRST ASSISTANT
ATTORNEY GENERAL

APPROVED
OPINION
COMMITTEE
BY *[Signature]*
CHAIRMAN