



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
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ATTORNEY GENERAL

Hon. W.E. Yancy
County Auditor
Tarrant County
Fort Worth, Texas

Dear Sir:

Opinion No. 0-1759

Re: Under Article 1052, C.C.P., can the county auditor legally withhold justice's fees on cases which are appealed to county court, paying such fees only upon disposition of the cases by the county court?

Your request for opinion upon the above question has been received and considered by this department. We quote from your letter as follows:

"Please give us an opinion from your Department on the construction of Article 1052, Code of Criminal Procedure relative to disposition of fees to Justice of the Peace in criminal cases.

"Article 1052 reads in part as follows:

"'.... Two Dollars and fifty cents shall be paid by the county to the Justice of the Peace for each criminal action tried and finally disposed of before him'....

"The point we are interested in is: whether or not the county auditor can legally withhold justice fees on cases which are appealed to the County Court, paying such fees only upon disposition of the cases by the County Court. The authority of the county auditor of course, to withhold such fees pending disposition by the County Court depends upon the construction and meaning of the term 'disposed of before him' and whether or not a case is finally disposed of when the case is appealed to the County Court.

"We have been taking the position that 'finally disposed of before him' does not mean that the cases

are finally disposed of before the justice of the peace where an appeal has been made to the County Court."

Opinion No. 0-616 of this Department, written by Hon. Ardell Williams, Assistant Attorney General, holds that Article 1052, Code of Criminal Procedure of Texas, provides that the Justice of the Peace shall receive \$2.50 in all counties having a population in excess of 20,000 inhabitants and \$3.00 in all counties having a population of 20,000 inhabitants or less for each criminal action tried and finally disposed of before him, such fees to be paid by the county when such claims are filed in compliance with Article 1052, C.C.P., and that it is immaterial whether the defendant who is convicted in such criminal action pays his fine and costs or works his fine and costs out on the county farm, public roads or other public works of the county, or satisfies such fine and costs by staying in jail a sufficient length of time to discharge his fine and costs.

Article 833, Code of Criminal Procedure of Texas, reads as follows:

"In appeals from the judgments of justice or corporation courts, the defendant shall, if he be in custody, be committed to jail unless he give bond with sufficient security, to be approved by the court from whose judgment the appeal is taken, in an amount not less than double the amount of fine and costs adjudged against him, payable to the State of Texas; provided said bond shall not in any case be for a less sum than fifty dollars. Said bond shall recite that in said cause the defendant was convicted and has appealed, and be conditioned that the defendant shall make his personal appearance before the court to which the appeal is taken instanter, if said court be then in session; and if said court be not in session, then at its next regular term, stating the time and place of holding the same, and there remain from day to day and term to term, and answer in said cause in said court."

Article 834, Code of Criminal Procedure of Texas, reads as follows:

"In appeals from justice and corporation courts, when the appeal bond provided for in the preceding article has been filed with the justice or judge who tried the case, the appeal in such case shall be held to be perfected. No appeal

shall be dismissed because defendant failed to give notice of appeal in open court, nor on account of any defect in the transcript."

Article 836, Code of Criminal Procedure of Texas, reads as follows:

"If the defendant is not in custody, a notice of appeal shall have no effect whatever until the required appeal bond has been given and approved; and such appeal bond shall, in all cases, be given within ten days after the judgment of the court refusing a new trial has been rendered, and not afterward."

Article 837, Code of Criminal Procedure of Texas, reads as follows:

"In all appeals from justice and corporation courts to the county court, the trial shall be de novo in the county court, the same as if the prosecution had been originally commenced in that court."

Article 838, Code of Criminal Procedure of Texas, reads as follows:

"In appeals from justice and corporation courts, all the original papers in the case, together with the appeal bond, if any, and together with a certified transcript of all the proceedings had in the case before such court shall be delivered without delay to the clerk of the court to which the appeal was taken, who shall file the same and docket the case."

Article 911, Code of Criminal Procedure of Texas, reads as follows:

"A Justice may, for good cause shown, grant the defendant a new trial, whenever such justice shall consider that justice has not been done the defendant in the trial of such case."

Article 912, Code of Criminal Procedure of Texas, reads as follows:

"An application for a new trial must be made within one day after the rendition of judgment, and not afterward; and the execution of the

judgment shall not be stayed until a new trial has been granted."

The case of Guenzel vs. State, 47 Cr. R. 111, 80 SW 371, holds that where a defendant was convicted in justice court and a defective appeal bond to the county court was given and the defendant allowed to go free, he could not afterwards within the ten days again subject himself to the jurisdiction of the justice court and give another and sufficient bond, so as to perfect his appeal; that an imperfect appeal bond from justice to county court cannot be amended; that there are two ways by which county court can acquire jurisdiction; one is where defendant remains in the custody of the sheriff and the record so shows and the other is where defendant gives a good appeal bond.

The case of Chatfield vs. State, 47 SW 2nd 315, Texas Court of Criminal Appeals, holds that where motion for new trial is not made within one day after judgment, as required by statutes, justice loses jurisdiction to set aside judgment and that where defendant is not in custody, appeal bond must be filed within ten days after judgment of the justice of the peace. In this case the judgment of the justice court was entered May 27, 1931, convicting the defendant. Appellant filed his appeal bond on June 9, 1931 and transcript filed in the county court, at the next term of the county court the State moved to dismiss appellant's appeal because appellant's appeal bond had not been filed within the time allowed by law. The county court dismissed the appeal from which appellant appealed to the court of criminal appeals. The judgment of the Court of Criminal Appeals was rendered March 2, 1932, about ten months after the original conviction. The Court of Criminal Appeals affirmed the judgment of the county court.

The case of Ex Parte Jones, 128 Cr. R. 380, 81 SW 2nd 706, Texas Court of Criminal Appeals, holds that, an appeal to county court from justice court the complaint must be read or waived, such plea must be entered as defendant sees fit, evidence must be heard and verdict and judgment rendered in accordance with law without regard to evidence, plea or manner of conduct trial took in justice court.

As we view it, the purpose of Article 1052, supra, is to provide compensation for the justice of the peace for his services in disposing of criminal actions before him which are final judgments insofar as his jurisdiction is concerned. If the defendant is acquitted and the State's attorney makes the proper certificate the justice is entitled to his fee. If the defendant is convicted and no new trial be granted within the time allowed by law, the judgment of conviction is final inso-

far as the jurisdiction of the justice court is concerned. If the defendant is convicted in justice court and appeals to county court by filing a defective bond and motion to dismiss appeal is granted in the county court and no appeal had therefrom to the Court of Criminal Appeals, or if the judgment of the county court in dismissing the appeal is affirmed by the Court of Criminal Appeals, the judgment in the justice court is valid and enforceable. The effect of such appeals was to delay the enforcement of and the collection of the final judgment of the justice court. As pointed out in opinion No. 0-616, supra, the justice of the peace's right to compensation from the county does not depend upon the collection or enforcement of the judgment but rather on the rendition of his final judgment.

You are, therefore, respectfully advised that it is the opinion of this Department that your question should be answered in the negative and it is so answered.

Yours very truly
ATTORNEY GENERAL OF TEXAS

By s/Wm. J. Fanning
Wm. J. Fanning
Assistant

WJF:AW:wc

APPROVED DEC 13, 1939
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman