



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Hon. B. M. Whitesacre  
County Auditor  
Grayson County  
Sherman, Texas

Dear Sir:

Opinion No. O-2112  
Re: H. B. 205, 46th Legislature - City  
Marshals.

Your request for opinion upon the following ques-  
tions:

"1. Would the county be liable under H. B. 205 for one-half of the fees of a city marshal of Whitesboro who makes arrests and files his cases in the justice of peace court of that precinct?

"2. Would the above named city marshal be allowed to collect and retain the same fees as sheriffs or constables in misdemeanor cases filed by him in the justice of peace court when the defendant pays his fine and costs upon conviction?

has been received and carefully considered by this department.

H. B. 205 of the 46th Legislature of Texas reads as follows:

"The county shall not be liable to the officer and witness having costs in a misdemeanor case where defendant pays his fine and costs. The county shall be liable for one-half of the fees of the officers of the Court, when the defendant fails to pay his fine and lays his fine out in the county jail or discharges the same by means of working such fine

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out on the county roads or on any county project. And to pay such half of costs, the County Clerk shall issue his warrant on the County Treasurer in favor of such officer to be paid out of the Road and Bridge Fund or other funds not otherwise appropriated. As amended Acts 1937, 45th Leg., p. 1323, ch. 488, §1; Acts 1939, 46th Leg., p. 143, §1."

City marshals are peace officers. Article 36, Code of Criminal Procedure provides as follows:

"The following are 'peace officers': The sheriff and his deputies, constable, the marshal, or policeman of an incorporated town or city, the officers, non-commissioned officers and privates of the State Ranger force, and any private person specially appointed to execute criminal process."

Article 1067, Code of Criminal Procedure, reads as follows:

"Constables, marshals or other peace officers who execute process and perform services for justices in criminal actions, shall receive the same fees allowed to sheriffs for the same services."

As a peace officer, a city marshal may file such cases as come within the scope of his authority in any court having jurisdiction thereof. His duties and powers are variously defined in Articles 999 and 1147, Revised Civil Statutes.

It is fundamental that peace officers are entitled to collect fees only for services performed. If the city marshal files a case in justice court and performs services he is entitled to the same fees as the sheriff or constable would be entitled to for performing similar services.

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You are therefore respectfully advised that it is the opinion of this department that your questions should be answered in the affirmative, and they are so answered.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Wm. J. Fanning*

Wm. J. Fanning  
Assistant

WJF:AK

APPROVED APR 1, 1940

*George B. Mann*

ATTORNEY GENERAL OF TEXAS

APPROVED  
OPINION  
COMMITTEE  
BY *BWB*