



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Ben J. Dean
District Attorney
Breckenridge, Texas

Dear Sir:

Opinion No. 0-3057
Re: Fees of Justice of the Peace
under facts stated.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"Where a defendant is charged with driving while intoxicated and the Justice of the Peace sits as an examining court in an examining trial and an indictment is returned and the defendant is given a fine and jail sentence, I should like to ask you the following questions:

"(a) Is the Justice of the Peace entitled to the \$3.00 provided in Article 1071, C.C.P.?"

"(b) Is the Justice of the Peace entitled to one-half of his costs as provided in Article 1055, C. C. P.?"

Article 1019, Vernon's Annotated Texas Code of Criminal Procedure, reads as follows:

"If the defendant is indicted for a felony and upon conviction his punishment is by fine or confinement in the county jail, or by both such fine and confinement in the county jail or convicted of a misdemeanor, no costs shall be paid by the State to any officer. All costs in such cases shall be taxed, assessed and collected as in misdemeanor cases."

Honorable Ben J. Dean, Page 2

Article 1071, Vernon's Annotated Texas Code of Criminal Procedure, reads as follows:

"Justices of the peace who sit as an examining court in misdemeanor cases shall be entitled to the same fees allowed by law to such justices for similar services in the trial of such cases, not to exceed three dollars in any one case, to be paid by the defendant in case of final conviction."

Article 1052, Vernon's Annotated Texas Code of Criminal Procedure, reads as follows:

"Three Dollars shall be paid by the county to the County Judge, or Judge of the Court at Law, and 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. Provided, however, that in all counties having a population of 20,000 or less, the Justice of the Peace shall receive a trial fee of Three Dollars. Such Judge or Justice shall present to the Commissioners' Court of his county at a regular term thereof, a written account specifying each criminal action in which he claims such fee, certified by such Judge or Justice to be correct, and filed with the County Clerk. The Commissioners' Court shall approve such account for such amount as they find to be correct; and order a draft to be issued upon the County Treasurer in favor of such Judge or Justice for the amount so approved. Provided the Commissioners' Court shall not pay any account or trial fees in any case tried and in which an acquittal is had unless the State of Texas was represented in the trial of said cause by the County Attorney, or his assistant, Criminal District Attorney or his assistant, and the certificate of said Attorney is attached to said account

Honorable Ben J. Dean, Page 3

certifying to the fact that said cause was tried, and the State of Texas was represented, and that in his judgment there was sufficient evidence in said cause to demand a trial of same."

The population of Stephens County, Texas, is less than 20,000 inhabitants according to the 1940 Federal Census.

Opinion No. C-2877 of this department passes on a situation where a Justice of the Peace (on the fee system) holds an examining trial where a defendant is charged with a felony, to wit, driving a motor vehicle while intoxicated and where the constable (on the fee system) makes the arrest for examining trial, etc., and where the Grand Jury indicts the defendant and where upon trial the defendant is given a fine and jail sentence and where the defendant does not pay his fine and costs but lays the same out in jail or works it out on the county roads or other county projects. This opinion holds that under said facts the county is liable to the Justice of the Peace and constable for one-half of their legal examining trial fees in said cause. We enclose herewith a copy of opinion No. C-2877 for your information.

In answer to your first question you are respectfully advised that it is the opinion of this department that the Justice of the Peace of Stephens County would be entitled to collect a fee of \$3.00 from the defendant under the facts stated.

In answer to your second question it is our opinion that under the facts stated if the defendant could not pay the fine and costs and laid same out in jail or worked it out on the county roads or on a county project the county would be liable to the Justice for one-half of his examining trial fee under Article 1055, V. A. T. C. C. P.

Honorable Ben J. Dean, Page 4

It is to be understood that we do not pass upon the constitutionality of Article 1071 of the Code of Criminal Procedure, supra.

Very truly yours

APPROVED FEB 21, 1941

ATTORNEY GENERAL OF TEXAS

George R. Miller
FIRST ASSISTANT
ATTORNEY GENERAL By

Wm. J. Fanning
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WJF:GO

ENCLOSURE

