



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Faires Wade  
County Attorney  
Rockwall County  
Rockwall, Texas

Dear Sir:

Opinion No. 9-3227

Re: Is a constable entitled to mileage expense when he goes into a neighboring county and with the local constable there serves a warrant of arrest, approves the bond of the defendant and releases him on his promise to appear any time he is given notice by the justice of the peace or prosecuting attorney in the county in which charges have been filed?

Your recent request for an opinion of this department on the above stated question has been received.

We quote from your letters of February 19 and February 21, 1941, as follows:

"The local constable has asked me whether or not he is entitled to mileage expense when he goes into the neighboring county and with the local constable there serves a warrant of arrest, approves the bond of the defendant and releases him on his promise to appear any time he is given notice by the justice of the peace or prosecuting attorney in the county in which charges have been filed. . . .

". . . The constable here took a warrant of arrest into the neighboring county and with the local officer there made the arrest. The local constable then approved the bond and released the defendant who agreed to appear when given notice to do so by the local officer. The question is

*Handwritten initials*

FILE NO. 0-5127

Honorable Faires Wade, Page 2

can the constable here collect mileage for going and coming in making the arrest and approving the bond. . . ."

Article 1065, Code of Criminal Procedure, reads in part as follows:

"The following fees shall be allowed the sheriff, or other peace officer performing the same services in misdemeanor cases, to be taxed against the defendant on conviction:

". . .

"4. For taking and approving each bond, and returning the same to the court house, when necessary, one dollar and fifty cents.

". . .

"11. For each mile he may be compelled to travel in executing criminal process and summoning or attaching witness, seven and one-half cents. For traveling in the service of process not otherwise provided for, the sum of seven and one-half cents for each mile going and returning. If two or more persons are mentioned in the same writ, or two or more writs in the same case, he shall charge only for the distance actually and necessarily traveled in the same."

It is necessary that we bear in mind that the fee statutes are strictly construed and fees by implication are not permitted. It is a very settled principle of law that a constable, who is compensated on a fee basis, is not entitled to any fee at all in a misdemeanor case unless a conviction is obtained. (Texas Jurisprudence, Vol. 34, p. 508; McCalla v. City of Rockdale, 246 S. W. 654)

Article 1065, supra, expressly provides fees as compensation for the particular services enumerated therein and unless the particular service is actually performed the officer is entitled to no fee for such service. The fees provided therein are allowed only when such services

Honorable Faires Wade, Page 3

are actually performed by the officer. Under the facts stated in your letter it is apparent that the constable traveled in a neighboring county with a warrant of arrest and approved the bond of the defendant and released him on his promise to appear when notified by the justice of the peace or prosecuting attorney in the county in which the charge was filed.

This department held in opinion No. 0-1240 that a constable has legal authority to serve a warrant of arrest outside the precinct and county of his residence. A copy of this opinion is enclosed for your information.

In view of the above stated facts and Article 1065, supra, you are respectfully advised that it is the opinion of this department that the constable is entitled to One Dollar and Fifty Cents (\$1.50) for taking and approving the bond of the defendant. You are further advised that the constable is entitled to seven and one-half cents (7½¢) for each mile he was compelled to travel in executing the warrant of arrest; all of said fees to be charged against the defendant upon conviction.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

*Ardell Williams*

By

Ardell Williams  
Assistant

AW:GO

APPROVED MAR 13, 1941

*Ferdinand Mann*

ATTORNEY GENERAL OF TEXAS

