



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Joe C. Gladney  
Criminal District Attorney  
Henderson, Texas

Dear Sir:

Attention: Hon. J. M. Burns

Opinion No. ~~0-5260~~

Re: Would it be necessary for the county to establish a county farm or a county workhouse before the Commissioners' Court could utilize the labor of persons convicted of misdemeanors, as provided in Article 793 and Article 794, Code of Criminal Procedure, on public roads, bridges and other public works of the county, and related questions?

Your recent request for an opinion of this department upon the questions as are herein stated has been received.

We quote from your letter as follows:

"This is to request an opinion from your office on the following questions.

"1. For the Commissioners Court of Rusk County to utilize the labor of persons convicted of misdemeanor's, as provided in Art. 793 and 794, C.C.P., on public roads, bridges and other public works of the County, would it be necessary for the County to establish a County farm or a County work house?

"2. If the Commissioners Court, by proper order, used such labor then would it be

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mandatory on the Court to pay to the Officers the fees as provided in Art 1015 C.C.P., since all Officers in Rusk County are compensated on a salary, and what provision is made for the payment by the Court of the fine?

"3. Rusk County has a population of 51,008. However, it is my understanding that all the statutes providing for paying convicts who work in discharge of their fines have been held unconstitutional where it has been attempted to allow them less than \$3.00 a day. Am I right in this and is \$3.00 a day the least amount that could be allowed such labor?

"4. If the fine and cost assessed is less than \$30.00 and the defendant works same out, would he have to work ten days?

"Art 794, C.C.P., provides that a Commissioners Court may provide for a work house and the establishment of a County farm in connection therewith. Section 5 of said Art provides "they shall be put to labor upon public roads, bridges and other public works of the County when their labor cannot be utilized in the County work house or County farm". The construction the writer places on that statute is that before convicts can be placed upon public roads, bridges or other public works of the County there must be in existence a County work house and County farm, and, therefore, the first question should be answered in the negative.

"In answer to question Number 2 it is the opinion of the writer that since all officers in Rusk County are paid a salary that it would not be necessary for the County to pay the fees allowed by law to the various officers as it would merely be transferring the money from one

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fund to another. Art 1055, C.C.P., provides that the County shall be liable for one-half of the fees of the Officers of the County when the defendant fails to pay his fine or lays it out in jail or works it out but makes no provision for the payment of the fine. Therefore, it is the opinion of this writer that the County would not be liable for the fine where it had utilized the labor of a person owing the same.

"In answer to question Number 3 it is my opinion that Art 793 C.C.P., controls and that \$3.00 a day is the amount to be allowed."

Articles 793 and 794, Vernon's Annotated Code of Criminal Procedure, read as follows:

"Art. 793. When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the workhouse, or on the county farm, or public improvements of the county, as provided in the succeeding article, or if there be no such workhouse, farm or improvements, he shall be imprisoned in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him; rating such labor or imprisonment at three dollars for each day thereof.

"Art. 794. Where the punishment assessed in a conviction for misdemeanor is confinement in jail for more than one day, or where in such conviction the punishment is assessed only at a pecuniary fine and the party so convicted is unable to pay the fine and costs adjudged against him, those so convicted shall be required to do manual labor in accordance with the provisions of this article under the following rules and regulations:

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"1. Each commissioners court may provide for the erection of a workhouse and the establishment of a county farm in connection therewith for the purpose of utilizing the labor of said parties so convicted.

"2. Such farms and workhouses shall be under the control and management of the commissioners court, and said court may adopt such rules and regulations not inconsistent with the laws as they deem necessary for the successful management and operation of said institutions and for effectively utilizing said labor.

"3. Such overseers and guards may be employed under the authority of the commissioners court as may be necessary to prevent escapes and to enforce such labor, and they shall be paid out of the county treasury such compensation as said court may prescribe.

"4. Those so convicted shall be so guarded while at work as to prevent escape.

"5. They shall be put to labor upon the public roads, bridges or other public works of the county when their labor cannot be utilized in the county workhouse or county farm.

"6. They shall be required to labor not less than eight nor more than ten hours each day, Sundays excepted. No person shall ever be required to work for more than one year.

"7. One who refuses to labor or is otherwise refractory or insubordinate may be punished by solitary confinement on bread and water or in such other manner as the commissioners court may direct.

"8. When not at labor they may be confined in jail or the workhouse, as may be most convenient, or as the regulations of the commissioners court may prescribe..

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"9. A female shall in no case be required to do manual labor except in the workhouse.

"10. One who from age, disease, or other physical or mental disability is unable to do manual labor shall not be required to work, but shall remain in jail until his term of imprisonment is ended, or until the fine and costs adjudged against him are discharged according to law. His inability to do manual labor may be determined by a physician appointed for that purpose by the county judge or the commissioners court, who shall be paid for such service such compensation as said court may allow.

"11. One convicted of a misdemeanor whose punishment either in whole or in part is imprisonment in jail may avoid manual labor by payment into the county treasury of one dollar for each day of the term of his imprisonment, and the receipt of the county treasurer to that effect shall be sufficient authority for the sheriff to detain him in jail without labor."

Section 3 of Article 3912e reads as follows:

"In all cases where the Commissioners' Court shall have determined that county officers or precinct officers in such county shall be compensated for their services by the payment of an annual salary, neither the State of Texas nor any county shall be charged with or pay to any of the officers so compensated, any fee or commission for the performance of any or all of the duties of their offices but such officers shall receive said salary in lieu of all other fees, commissions or compensation which they would otherwise be authorized to retain; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds hereinafter provided for all fees

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and commissioners which he is authorized under law to collect; and it shall be his duty to account for and to pay all such monies received by him into the fund created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the payment of costs in civil cases by the State but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act to account for fees, commissioners and costs collected from private parties."

The Texas Court of Criminal Appeals has heretofore held that Articles 793, 793a, 794a, 794b, 794c, and 794d, Vernon's Annotated Code of Criminal Procedure, were unconstitutional for the reasons set forth in *Ex parte Ferguson*, 132 S. W. (2d) 408. Therefore, we are not concerned with these statutes. However, the original Article 795, Code of Criminal Procedure, quoted above, was upheld in the above mentioned case.

It will be noted that Section 1 of Article 794, Code of Criminal Procedure, merely provides "each Commissioners' Court may provide for the erection of a workhouse and the establishment of a county farm in connection therewith for the purpose of utilizing the labor of said parties so convicted." Section 5 of said Article provides: "They shall be put to labor upon the public roads, bridges or other public works of the county when their labor cannot be utilized in the county workhouse or county farm." Section 1, above quoted, is not mandatory, and it is within the discretion of the Commissioners' Court whether or not they provide for the erection of a workhouse and the establishment of a county farm. Section 5 provides that when the labor of the county convicts cannot be utilized in the county workhouse or county farm, they shall be put to labor upon the public roads, bridges or other public works in the county. It is also to be noted that Article 793, Code of Criminal Procedure, specifically provides that when a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary

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fine if he is unable to pay the fine and costs adjudged against him he may for such time as will satisfy the judge be put to work in the workhouse, or the county farm, or a public improvement of the county as provided in the succeeding articles. Therefore, your first question is respectfully answered in the negative.

Article 1055, Code of Criminal Procedure, 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 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."

Considering Article 1055, supra, and Section 3 of Article 3912e, supra, the Commissioners' Court is not authorized to pay the officers who are compensated on an annual salary basis the compensation provided by Article 1055. There is no provision whatever authorizing the county to pay the fine of a defendant who satisfies the fine and costs assessed against him by working in the workhouse or on the county farm or public improvements of the county or where the defendant is imprisoned in jail for a sufficient length of time to discharge the full amount of the fine and costs adjudged against him.

In answer to your third question, it is our opinion that Article 793, Code of Criminal Procedure, controls and that \$3.00 per day is the amount to be allowed.

With reference to your fourth question, we call your attention to the case *Ex parte Young*, 136 S. W. (2d) 863. Referring to Article 793, Code of Criminal Procedure, the court said:

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"We are impressed with the idea that such article is a general one, and applies to any and all misdemeanors generally, unless there should appear in such Code a more specific one dealing with some subject therein. In our search therefor we came in contact with Art. 920, C. C. P., under the heading of 'Judgment in Justice Court,' which reads as follows:

"A defendant placed in jail on account of failure to pay the fine and costs can be discharged on habeas corpus by showing:

"1. That he is too poor to pay the fine and costs, and

"2. That he has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of three dollars for each day.

"But the defendant shall, in no case under this article, be discharged until he has been imprisoned at least ten days; and a justice of the peace may discharge the defendant upon his showing the same cause, by application to such justice; and when such application is granted, the justice shall note the same on his docket."

"It is our holding that Article 920, supra, prevents the discharge of any person by means of a writ of habeas corpus who is compelled to lay out his fine and costs in jail, which was levied in a justice court, until he has served at least ten days in jail. At such time he is entitled to the writ of habeas corpus, and shall be allowed the sum of three dollars per day for each day he remained in jail, and if such amount would have discharged the fine and costs, he would be entitled to his discharge on a habeas corpus hearing. Ex parte McLaughlin, 124 Tex. Cr. R. 40, 60 S. W. 2d 736; Ex parte

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Fernandez, 122 Tex. Cr. R. 641, 57 S. W. 2d 578. While this holding may operate as a seeming injustice to the relator herein, compelling him to serve ten days in jail for a \$14 fine, its correction is a matter for the legislature rather than this court. The statute is plain and we must follow it.

"We therefore hold herein that relator would have to either pay his fine and costs in the justice court, or serve at least ten days in jail before being entitled to his discharge herein by means of a writ of habeas corpus."

In view of what has been said in the above mentioned case, we respectfully answer your fourth question in the affirmative, when the conviction is obtained in a justice court. However, when the conviction is obtained in a county court, the question is answered in the negative.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED APR 2, 1941

*Howell*

FIRST ASSISTANT  
ATTORNEY GENERAL

By

*Ardell Williams*

Ardell Williams  
Assistant

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