



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

Honorable Roland Boyd
County Attorney
Collin County
McKinney, Texas

Dear Sir:

Opinion No. O-3570

Re: Constables - Fees -
Article 1055, V.A.C.G.P.

Your request for an opinion upon the following stated question:

"If a constable makes an arrest in a misdemeanor case and carries the defendant before the Justice of the Peace and he pleads guilty (or is convicted) and he is committed to jail or the county farm and escapes, is the constable entitled to one-half of his fees under Article 1055 of the Code of Criminal Procedure?"

has been received and carefully considered by this Department.

Article 1055, Vernon's Annotated Texas 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

Hon. Roland Boyd, page 2

in favor of such officer to be paid out of the Road and Bridge Fund or other funds not otherwise appropriated."

We assume from your letter that the constable is compensated on a fee basis and our answer hereto is predicated upon that assumption. (Of course, if the constable was compensated upon a salary basis, he would not be entitled to any half-fees whatever under Article 1055, supra, from the county.)

If the defendant escaped from the county farm immediately after being placed there, it would be our opinion that your question should be answered in the negative. However, if the defendant laid out or worked out a portion of his fine and costs prior to escaping from the county farm, the constable would be entitled to a proportionate part of his half-fees from the county. If the defendant were subsequently re-captured and worked out or laid out the balance of his fine and costs, the constable would then be entitled to the balance of his half-fees from the county.

APPROVED MAY 31, 1941

Very truly yours

ATTORNEY GENERAL OF TEXAS

Gross
FIRST ASSISTANT
ATTORNEY GENERAL

By

Wm. J. Fanning

Wm. J. Fanning
Assistant

WJF:N

