



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Thomas L. Blanton, Jr.  
County Attorney  
Shackelford County  
Albany, Texas

Dear Sir:

Opinion No. O-3883

Re: Trial fees of county judge  
and justice of the peace -  
commissioners' court -  
stenographers.

Your request for an opinion has been received and carefully considered by this Department. We have previously answered your first question by sending you copies of opinions Nos. O-391 and O-394 of this Department. We quote from your request as follows:

"Second question:

"Article 1055 of the Code of Criminal Procedure provides that the county shall be liable for one half of the fees of officers of the court when the defendant fails to pay his fine and lays his fine out in the county jail. Does this provision apply to the fees of the judge and justice of the peace which are provided for in Article 1052 of said code, or is the county liable for the full amount of such fees even where the defendant fails to pay his fine and lays his fine out in the county jail?

"Brief on Second Question:

"There are no cases upon this point, and it is entirely a matter of reasoning from the statutes. However, it is my opinion that the county is liable

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for the full amount of the fees provided for in Article 1052 where the defendant lays his fine out, because the first sentence of Article 1055 seems to show that that article could not apply to the fees provided for in Article 1052 without nullifying the terms of Article 1052 in cases where the defendant pays his fine. It seems that the fees intended to be affected by Article 1055 are only those for which the defendant in a criminal action is liable, and that this article is not intended to affect fees which are the primary obligation of the county.

"Third Question:

"Does the Commissioners' Court of Shackelford County have the authority to allow each commissioner a monthly allowance of \$33.54 for automobile expenses incurred in supervising county roads, said county having a population of 6,211, and an assessed valuation of about \$7,000,000, and said commissioners receiving a regular salary of \$1,400 per annum for their services as commissioner?

"Brief on Third Question:

"No express authority for such an allowance appears in the statutes. However, Article 2351 charges commissioners with laying out, establishing, changing and discontinuing public roads and highways, with building bridges and keeping them in repair, and with exercising general control over all roads, highways, ferries and bridges in their counties. It appears that the commissioners should be reimbursed for expenses incurred in the exercise of such duties, and that there would be an implied authority for an allowance such as the one in question.

"Fourth question:

"Does the Commissioners' Court have the authority to employ stenographical help reasonably necessary in the discharge of its duties, and pay for same out of the funds of the county?

"Brief on Fourth question:

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"In chapter 2 of title 44, the Commissioners' Court is given a number of duties which today necessarily involve a large amount of stenographical work. The statute does not expressly give the Commissioners' Court the authority to employ a stenographer to do this work. However, since stenographical help is reasonably necessary to carry out the express provisions of the statute, it appears that the Commissioners' Court would have an implied authority to employ such a stenographer, and to pay her out of the county funds."

This Department has repeatedly ruled that Justices of the Peace and County Judges in fee counties are entitled to their full fees from the county under Article 1052, C. C. P., for each criminal action tried and finally disposed of by them, regardless of the method of satisfaction of the fine and costs. We enclose herewith a copy of opinion No. 0-618 of this Department for your information.

It is our opinion that you have correctly answered the second question.

We assume that your county operates under the general road law and we base our answer to your third question upon that assumption.

This Department has repeatedly ruled that in counties operating under the general road law that the commissioners' court has no authority to allow each commissioner a monthly allowance for automobile expenses incurred in supervising county roads. For your information we enclose herewith copies of opinions Nos. 0-3119 and 0-752 of this Department.

Your third question is, therefore, answered in the negative.

It is fundamental law that the commissioners' court has only such authority as is conferred upon it by the Constitution and statutes of this State, either specifically or by necessary implication. We have been unable to find any express or implied authority which would authorize the commissioners' court of your county to employ a stenographer.

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Your fourth question is, therefore, answered in the negative.

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED JUN 19 1941

*Brook Miller*

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WJF:N

By

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