



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable H. N. Darst
County Auditor
Fort Bend County
Richmond, Texas

Dear Sir:

Opinion No. O-3892
Re: Constable on the fee system
is not entitled to car mile-
age allowance.

This will acknowledge receipt of your letter of August 18, 1941, in which you request the opinion of this department on the question:

"The constable of precinct No. 1, Fort Bend County is on a fee basis, is it possible for the Commissioner's Court to legally allow him car mileage?"

The authority for allowance of car expense to county officers compensated upon a fee basis must be found in paragraph (a) of Article 3899, Revised Civil Statutes, which reads:

"(a) At the close of each month of his tenure of office each officer named herein who is compensated on a fee basis shall make as part of the report now required by law, an itemized and sworn statement of all the actual and necessary expenses incurred by him in the conduct of his office, such as stationery, stamps, telephone, premiums on officials' bonds, including the cost of surety bonds for his Deputies, premium on fire, burglary, theft, robbery insurance protecting public funds, traveling expenses and other necessary expenses. The Commissioners' Court of the county of the Sheriff's residence may, upon the written and sworn application of the Sheriff stating the

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necessity therefor, purchase equipment for a bureau of criminal identification such as cameras, finger print cards, inks, chemicals, microscopes, radio and laboratory equipment, filing cards, filing cabinets, tear gas and other equipment in keeping with the system in use by the Department of Public Safety of this State or the United States Department of Justice and/or Bureau of Criminal Identification. If such expenses be incurred in connection with any particular case, such statement shall name such case. Such expense account shall be subject to the audit of the County Auditor, if any, otherwise by the Commissioners' Court; and if it appears that any item of such expense was not incurred by such officer or such item was not a necessary expense of office, such item shall be by such auditor or court rejected, in which case the collections of such item may be adjudicated in any court of competent jurisdiction. The amount of salaries paid to Assistants and Deputies shall also be clearly shown by such officer, giving the name, position and amount paid each; and in no event shall any officer show any greater amount than actually paid any such Assistant or Deputy. The amount of such expenses, together with the amount of salaries paid to Assistants, Deputies and Clerks shall be paid out of the fees earned by such officer. The Commissioners' Court of the county of the Sheriff's residence may, upon the written and sworn application of the Sheriff stating the necessity therefor, allow one or more automobiles to be used by the Sheriff in the discharge of his official duties, which, if purchased by the County, shall be bought in the manner prescribed by law for the purchase of supplies and paid for out of the General Fund of the county and they shall be and remain the property of the county. The expense of maintenance, depreciation and operation of such automobiles as may be allowed, whether purchased by the county or owned by the Sheriff or his Deputies personally, shall be paid for by the Sheriff and the amount

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thereof shall be reported by the Sheriff, on the report above mentioned, in the same manner as herein provided for other expenses."

Construing such article in our opinion No. 0-1284, a copy of which we enclose for your guidance, we held that the Commissioners' Court of a county operating upon a fee basis could not allow the sheriff a monthly sum for the maintenance and upkeep of an automobile out of the general fund of the county. Such holding is equally applicable to a constable, and your Commissioners' Court is without authority to make any such allowance out of the general fund of the county.

The above quoted statute vests in the Commissioners' Court the right and authority to approve reasonable and necessary traveling expenses for the constable, but such items must be paid by the constable out of his fees of office and reported monthly as such statute requires.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED SEP 8, 1941
James B. Hester
FIRST ASSISTANT
ATTORNEY GENERAL

By *Lloyd Armstrong*
Lloyd Armstrong
Assistant

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ENCLOSURE

