



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable R. B. Ritchey, Jr.  
County Attorney  
Jasper County  
Jasper, Texas

Dear Sir:

Opinion No. 0-4159  
Re: County Judges - allowance of  
credit on sentence in misde-  
meanor cases for jail service  
prior to date of sentence and  
related matter.

Your request for opinion has been received and care-  
fully considered by this department. We quote from your re-  
quest as follows:

"In a misdemeanor case in county court, the  
county judge sentenced the defendant to four months  
in jail, and in sentencing the defendant stated  
that he was to be allowed as a credit the time that  
he had already spent in jail. The defendant had  
spent the four months in jail prior to his plea of  
guilty and sentence by the Judge. The defendant  
was turned out of jail by the sheriff after the  
sentence was passed, following the Judge's instruc-  
tions.

"Is it possible for the Judge to issue such  
a sentence, and in such a case are the officers  
entitled to their half-fees?

"Art. 754 (CCP) provides: If the punishment  
is any other than a fine, the judgment shall specify  
it, and order it enforced by the proper process.  
It shall also adjudge the costs against the defend-  
ant, and order the collection thereof as in other  
cases. Art. 797 (CCP) provides: A defendant who  
has remained in jail the length of time required  
by the judgment shall be discharged.

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"Now in the instant case, the defendant had been in jail sufficient length of time to discharge the four months sentence and the costs adjudged against him, this time having been served prior to the sentence and judgment by the Court; but the court's judgment and sentence was to the effect that he was to be given credit for the time already spent in jail. No doubt, the purpose of the Judge in making the sentence in this way was to save the county the costs of feeding the prisoner any further, and he acted on the ground that the time that the defendant had spent in jail was ample punishment for the offense committed."

"Kindly render your opinion as to whether such action on the part of the court is permissible, and if the officers are entitled to their half fees in such instance."

Article 768, Vernon's Annotated Texas Code of Criminal Procedure, reads as follows:

"If a new trial is not granted, nor judgment arrested in felony cases, the sentence shall be pronounced in the presence of the defendant at any time after the expiration of the time allowed for making the motion for a new trial or the motion in arrest of judgment; provided that in all criminal cases the judge of the court in which defendant was convicted, may within his discretion, give the defendant credit on his sentence for the time, or any part thereof, which said defendant has spent in jail in said cause, from the time of his arrest and confinement until his sentence by the trial court; and provided further that in all cases where the defendant has been tried for any violation of the laws of the State of Texas, and has been convicted and has appealed from said judgment and/or sentence of conviction, and where said cause has been affirmed by the Court of Criminal Appeals, and after receipt of the mandate by the Clerk of the trial court, the judge is authorized to again call said defendant before

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him, and if, pending appeal, the defendant has not made bond or entered into recognizance and has remained in jail pending the time of such appeal, said trial judge may then in his discretion re-sentence the defendant, and may subtract from the original sentence pronounced upon the defendant, the length of time the defendant has lain in jail pending such appeal; provided, however, that the provisions of this Act shall not apply after conviction and sentence in felony cases in which bond or recognizance is not permitted by law." (Underscoring ours)

Opinion No. 0-3279 of this department holds that a sheriff may not hold a defendant for costs in a misdemeanor case where the judgment does not provide for costs. We enclose herewith a copy of said opinion for your information.

Article 1053, 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 in favor of such officer to be paid out of the Road and Bridge Fund or other funds not otherwise appropriated."

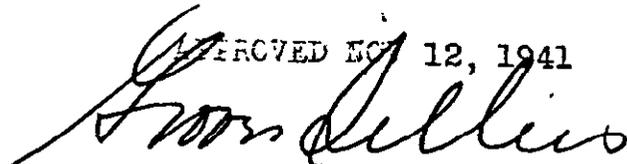
You are respectfully advised that it is the opinion of this department that Article 768, V. A. C. C. P., supra, authorizes the county judge to give a defendant convicted of a misdemeanor credit on his sentence for the time, or any part thereof, which said defendant has spent in jail in said cause, from the time of arrest and confinement until his sentence by the county judge.

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It is our further opinion under the facts stated in your letter that the officers would not be entitled to half fees from the county under Article 1055, V. A. C. C. P., supra, where the jailtime was served prior and not subsequent to the trial and conviction.

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED NOV 12, 1941  
  
 FIRST ASSISTANT  
 ATTORNEY GENERAL

By



W. J. Fanning  
 Assistant

WJF:GO

ENCLOSURE

