



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable I. L. Chandler
County Auditor
Montague County
Montague, Texas

Dear Sir:

Opinion No. 0-4243
Re: Fees of office - constables -
city marshals and nightwatch-
men - State Highway Patrolmen.

Your request for opinion upon the following stated questions:

"1. When a case is filed by the State Highway Patrol in the Justice of County Court is the Constable, City Marshal or nightwatchman entitle to any fees, and if they are entitled to any fees, please advise me what these fees are. The Highway Patrol has filed several cases in this county, and the City Marshal, Constable, and nightwatchman have claimed the fees, and in these cases the Highway Patrol make the arrest and placed the defendant in jail. The City Marshal, nightwatchman are paid a salary by the city, and the city pays the constable \$20.00 per month salary.

"2. Is the city Marshal or nightwatchman entitle to a fee when they make an arrest and file the case in the Justice or County Court, or should this fee go to the Constable.

"3. Can an arrest fee and mileage be charged a person charged with drunk driving in the County Court when this person has been arrested by the Highway Patrol, and taken to the County Jail."

has been received and carefully considered by this department.

Article 1011, Vernon's Annotated Texas Code of Criminal Procedure, provides:

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"No item of costs shall be taxed for a purported service which was not performed, or for a service for which no fee is expressly provided by law."

It is elementary and this department has repeatedly ruled that no peace officer is entitled to a fee for a service which he did not perform.

Opinion No. O-768 of this department holds that if a State highway patrolman arrests a defendant in a misdemeanor case and brings the defendant before the justice of the peace and defendant pleads guilty and is assessed a fine, the justice should not tax an arrest fee against the defendant. We enclose herewith a copy of this opinion for your information.

City marshals and city policemen are peace officers. Article 36, V.A.C.C.P., provides:

"The following are 'peace officers:' the sheriff and his deputies, constable, the marshal or policemen of an incorporated town or city, the officers, non-commissioned officers and privates of the State ranger force, and any private person specially appointed to execute criminal process."

Article 1067, V.A.C.C.P., provides:

"Constables, marshals or other peace officers who execute process and perform services for justices in criminal actions, shall receive the same fees allowed to sheriffs for the same services."

Opinion No. O-2112 of this department holds that if a city marshal files a case in justice court and performs services, he is entitled to the same fees as the sheriff or constable would be entitled to for performing similar services.

We quote from Opinion No. O-3791 of this department as follows:

". . . the chief of police is not entitled as a matter of right to act in any of the capacities mentioned, except to make the arrest, under the facts stated. He is however authorized to

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act in the other capacities named (summon a jury, wait upon the court, and in case the fine is not paid, to execute the commitment) when ordered to do so by the justice of the peace in each instance. The justice of the peace could order the sheriff or constable to perform any of the services necessary subsequent to the arrest by the chief of police. Where the chief of police is ordered to perform such services by the justice of the peace, he must do so and is entitled to receive the statutory fees provided for such services.

". . . Whether such officer may keep such fees for his own use as a part of his compensation, however, is a question which depends on the terms of the ordinance or agreement fixing his compensation. . . ."

We enclose herewith a copy of said opinion for your information.

We answer your questions as follows:

1. In your first question you state that the case was filed by a State highway patrolman. We assume from this statement that neither the constable, city marshal nor the nightwatchman made the arrest or performed any services in the case. If this be true they would be entitled to no fees whatever. If the constable or city marshal served a legal subpoena or summoned a jury upon order of the court or performed some other legal and necessary service of course they would be entitled to fees for legal services performed. If the city nightwatchman was a city policeman he would also be a peace officer and would be entitled to fees for legal services performed, if any.

2. The arrest fee would go to the peace officer making the arrest. If the nightwatchman was not a peace officer he would be entitled to no fee for making the arrest. The constable would not be entitled to an arrest fee because he made no arrest.

3. No arrest fee or mileage should be charged under the facts stated. As pointed out in Opinion No.

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0-768 of this department State Highway Patrolmen are paid a salary by the State of Texas for their services out of State appropriations, and they are not entitled to charge or collect fees from defendants in criminal cases.

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED BY
Wm. J. Fanning

ATTORNEY GENERAL

By

Wm. J. Fanning

Wm. J. Fanning
Assistant

WJF:LM

ENCLOSURES

