



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**GERALD C. MANN  
~~WOODRUFFSON~~  
ATTORNEY GENERAL**

Honorable T. Gilbert Adams  
County Attorney  
Jasper County  
Jasper, Texas

Dear Sir:

Opinion No. 0-5286  
Re: Authority of a Justice of the  
Peace to collect a fee for the  
issuance of a search warrant.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"I would thank you to furnish me with an opinion as to what method and manner a Justice of the Peace should follow in collecting fees for issuing a Search Warrant to Peace Officers in investigation of Liquor violations and other violations which do not come under the jurisdiction of the Justice Court, and in cases that do not come under the jurisdiction upon trial, of the Justice of the Peace, when the search warrant is used by the officer and no violation sufficient to prosecute, is found on the premises searched.

"Under Article 1066, Code of Criminal Procedure, Texas Statutes, it reads as follows:

"Justices of the peace shall receive the following fees in criminal actions tried before them, to be collected of the defendant in case of his conviction:

"1. For each warrant, Seventy-five cents.  
.....

"I do not find any provision in the Statute whereby a Justice of the Peace is protected in his fee when he issues a Search Warrant for the Peace Officer and the violation, if one is found to exist, comes under the jurisdiction of the District Court or the County Court, or where it is found that there is not sufficient violation to justify prosecution. I am referring especially

to violations of the Liquor Law and warrants issued by the Justice of the Peace for State Liquor Inspectors in their efforts to curb the violation of the Liquor laws in a dry area.

"I would assume that if there was not sufficient evidence found to prosecute a violation upon which a search warrant has issued, there would be no fee payable to the Justice of the Peace, but in the event there is sufficient evidence found by reason of the warrant, there is some way to protect the Justice for his services in the issuing of the warrant."

Article 1066, Revised Code of Criminal Procedure of Texas, 1925, referred to in your letter, was repealed in 1929 by H.B. 84 of the 41st Legislature of Texas, First Called Session.

There is no Texas statute allowing justices of the peace fees for issuing search warrants of any character.

We quote from 34 Texas Jurisprudence, page 511, as follows:

"As hereinbefore stated, the compensation of public officers is fixed by the Constitution or statutes. An officer may not claim or reach any money without a law authorizing him to do so, and clearly fixing the amount to which he is entitled."  
.....

In view of the above it is our opinion that justices of the peace are not entitled to any fees for issuing any character of search warrants.

We enclose herewith for your information a copy of opinion No. 0-4091 of this department which holds Article 1071, Vernon's Annotated Texas Code of Criminal Procedure (an article allowing justices of the peace examining trial fees in misdemeanor cases to be taxed against the defendant on conviction) to be unconstitutional.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/Wm. J. Fanning  
Wm. J. Fanning  
Assistant

WJF:mp:wc  
Encl.

APPROVED MAY 18, 1943  
s/Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman