



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Hon. Homer D. Eck  
County Auditor  
Fayette County  
La Grange, Texas

Dear Mr. Eck:

Opinion No. 0-6102  
Re: Would officer serving  
subpoena on out of  
county witness in  
inquest be entitled to  
fee? Also would witness  
be entitled to fee?

Your opinion request of recent date has been received  
and is herein quoted, as follows:

"Recently an accident occurred on a State Highway, near Schulenburg, Texas, in which six lives were taken. The Justice of the Peace holding the inquest is of the opinion a witness residing in Houston, Harris County, Texas, is a material witness and would like to issue a subpoena. Since Fayette County like Harris County operates under the Officers' Salary law, we are at a loss how a case of this character should be handled. Therefore, I am requesting your opinion on the questions;

- "1. Would the officer serving the subpoena be entitled to a fee?
- "2. If the officer serving the subpoena and/or the witness be entitled to fees, mileage, per Diem, etc., would Fayette County or the State of Texas be liable for the fees?"

Article 968, Code of Criminal Procedure of Texas, 1925, provides as follows:

"Any Justice of the Peace shall be authorized, and it shall be his duty, to hold inquests without a jury within his county, in the following cases:

- "1. When a person dies in prison
- "2. When any person is killed, or from any cause dies an unnatural death, except under sentence of the law, or in the absence of one or more good witnesses.
- "3. When the body of a human being is found, and the circumstances of his death are unknown.
- "4. When the circumstances of the death of any person are such as to lead to suspicion that he came to his death by unlawful means.

Article 974, of said Code, provides as follows:

"The Justice may issue subpoenas to enforce the attendance of witnesses upon an inquest and may issue attachments for those subpoenaed who fail to attend."

We can find no fee allowed by statute for the execution of such subpoenas of attachments in inquests of this nature.

To entitle an officer to receive fees or commissions, the receipt thereof must have been provided for and the amount fixed by law. 34 Texas Jur. p. 522.

As inquests upon dead bodies are not felony proceedings, we know of no statutory authority for the payment of fees by either the State or a county to witnesses attending such hearings.

Therefore, in answer to your questions, you are advised that neither the officer serving the process nor the witness attending the hearing would be entitled to a fee.

We suggest that under a grand jury investigation of this matter, if any investigation be necessary, material witnesses

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residing outside the county could be subpoenaed, or attached, to appear before the grand jury, and the officer serving such process, if he is on a fee basis, would be entitled to his fee, also such witnesses would be entitled to mileage and per diem. For the proper fund out of which such officers' fees are to be paid in counties operating on a salary basis, see the enclosed copy of our Opinion No. O-155.

Trusting this satisfactorily answers your inquiry,  
we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY (s) Robert L. Lattimore, Jr.  
Assistant

RLL:RT  
RLL:FO  
ENC.1

APPROVE JUL 13, 1944  
(s) Geo. P. Blackburn  
(Acting) ATTORNEY GENERAL  
OF TEXAS

APPROVED OPINION COMMITTEE  
BY (S) BWB, CHAIRMAN