



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Shelby K. Long
County Attorney
Jefferson County
Beaumont, Texas

Dear Sir:

Opinion No. O-7079

Re: Would the trial judge be entitled to the statutory fee provided under Sec. 1052, C.C.P., in the cases in question in which the accused was discharged?

We quote from your letter of January 25, 1946:

"On the 24th day of November, 1945, the local Game Warden, at the request of the Game, Fish, and Oyster Commission, filed in the Justice Court, Precinct No. 1, Jefferson County, Texas, nine cases against one R. Meyers charging him with offering for sale and having in his possession for the purpose of sale pelts of wild otter, in violation of the Game Laws of Texas. The complaints in these cases were drawn in the County Attorney's Office. These cases were set down for trial for January 9, 1946, and on this date the attorney for the defendant filed a motion in each case to quash. A copy of the motion which was filed in each case is attached to this letter. This motion in each instance was sustained and accused discharged.

"It is the contention of the trial judge that in each of these cases, he is entitled to the statutory fee provided under Section 1052 C.C.P., since the action taken in each instance amounts to a final disposition of the matter, thereby bringing to an end the trial of each case. In support of this contention the case of Richardson vs. State, 4 S. W. (2d) 79, is cited.

"We respectfully request your opinion in this regard."

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Article 1052 of our Code of Criminal Procedure, as amended in 1929, reads:

"Three Dollars shall be paid by the county to the County Judge, or Judge of the Court at Law, and Two Dollars and fifty cents shall be paid by the county to the Justice of the Peace, for each criminal action tried and finally disposed of before him. Provided, however, that in all counties having a population of 20,000 or less, the Justice of the Peace shall receive a trial fee of Three Dollars. Such Judge or Justice shall present to the Commissioners' Court of his county at a regular term thereof, a written account specifying each criminal action in which he claims such fee, certified by such Judge or Justice to be correct, and filed with the County Clerk. The Commissioners' Court shall approve such account for such amount as they find to be correct, and order a draft to be issued upon the County Treasurer in favor of such Judge or Justice for the amount so approved. Provided the Commissioners' Court shall not pay any account or trial fees in any case tried and in which an acquittal is had unless the State of Texas was represented in the trial of said cause by the County Attorney or his assistant, Criminal District Attorney or his assistant, and the certificate of said Attorney is attached to said account certifying to the fact that said cause was tried, and the State of Texas was represented, and that in his judgment there was sufficient evidence in said cause to demand a trial of same."

We think the decision of the Court of Criminal Appeals of Texas in the case of Richardson v. State, cited by you, is decisive of the question here presented. In that case the court said:

". . . The contention is made, as we understand it, that the Judge's fee is directly dependent upon an actual trial and disposition of cases in his court, and therefore a motion to quash an information or indictment before him, if sustained, results necessarily in his not

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receiving compensation; whereas, if same is overruled, and the case actually tried and disposed of, he will receive a fee of \$3 under article 1052, C.C.P. 1925"

". . . .

"There might be such issues tried and disposed of in a motion to quash as would amount to a final disposition and trial of a case and discharge of the accused. We can see no reason to doubt that in such a case the county judge would be entitled to his fee, payable, however, by the county"

The copy of motion to quash enclosed with your letter shows that the two grounds of the motions to quash the complaints were: first, that the act under which the prosecutions were brought was unconstitutional in that the caption thereof was defective; and second, that said act was unconstitutional in that it embraced more than one subject. The motions to quash were sustained. These are, in our opinion, "such issues tried and disposed of in a motion to quash as would amount to a final disposition and trial of a case and discharge of the accused."

It is therefore our opinion that the Justice of the Peace is entitled to collect from the county his trial fees in said cases, in accordance with the provisions of said Article 1052, C.C.P.

This opinion, however, is limited to the state of facts presented in the instant cases, and on the assumption that the precinct officers of Jefferson County are compensated on a fee basis.

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY

W. R. Allen

W. R. Allen
Assistant

APPROVED
OPINION
COMMITTEE
BY *BWT*
CHAIRMAN

Shelby F. Long