



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**JOHN BEN SHEPPERD
ATTORNEY GENERAL**

March 6, 1947

Hon. Jack C. Altaras
County Attorney
Johnson County
Cleburne, Texas

Opinion No. V-64

Re: Percentage of fines
payable to County
Attorneys and Con-
stables.

Dear Mr. Altaras:

Your recent request for an opinion is as follows:

"1. Is the County Attorney's office entitled to a percentage of fines paid to the State or County in criminal cases over and above the \$10.00 allowed the Attorney's office in the bill of court costs and if so in what amount?

"2. What percentage of a fine collected in the County Court by a non-salaried constable should be paid to the Constable by the County Clerk, and what constitutes collecting a fine? Does a fine assessed on a plea of guilty in the County Court constitute collecting a fine by the Constable?"

With reference to your first question, Article 950, Code of Criminal Procedure, provides as follows:

"The district or county attorney shall be entitled to ten per cent of all fines, forfeitures or moneys collected for the State or county, upon judgments recovered by him; and the clerk of the court in which said judgments are rendered shall be entitled to five per cent of the amount collected."

The statute quoted is plain, clear and unambiguous. It specifically provides that a District

or County Attorney is entitled to ten (10%) per cent of all fines, forfeitures or money collected for the State or county, upon judgments recovered by him. The commission so allowed is in addition to the fee allowed by statute to such officer for obtaining the judgment of conviction, which fee is regarded as costs against the defendant in a criminal case. Whenever the fine is paid in money to an officer authorized to receive the same, such as a Justice of the Peace, County or District Clerk, or other officer, the officer so collecting the amount of the fine should pay ten (10%) per cent of the amount collected to the County or District Attorney who obtained the judgment in that particular case. (Art. 1061, 1068, C.C.P.; also Arts. 7818, 1019, as amended in 1931, and 1027 as amended in 1933, V.C.C.P.; 19 Tex. Jur., page 654, Sec. 11)

We have answered your first question in the affirmative. In this connection, you are further advised that in all counties such as yours, where the county officers are compensated on a salary basis, all fees and commissions collected by the County Attorney must be deposited in the Officers' Salary Fund of the county. (Art. 3912e, V.A.C.S.) In those counties whose officers are compensated on a fee basis, the County Attorney may retain such fees and commissions, but must account for them to the county as required by the law governing officers in said counties.

The second paragraph of your request embraces three questions, two of which we have restated, and are as follows:

(a) Where a Constable, who is compensated on a fee basis, collects a fine assessed against a defendant upon conviction in the county court, what percentage of the fine is he entitled to receive from the County Clerk?

(b) What constitutes collecting a fine?

(c) Does a fine assessed on a plea of guilty constitute collecting a fine?

Article 951, C.C.P., reads as follows:

"The Sheriff or other officer, except a Justice of the Peace or his clerk, who collects money for the State or county, except jury fees, under any provision of this Code, shall be entitled to retain five per cent thereof when collected."

The answer to each of the above questions is as follows:

(a) When a Constable, compensated on a fee basis, actually collects a fine in instances where he is authorized by law to do so, he is entitled to five (5%) per cent of the amount collected, otherwise he is not entitled to any commission whatsoever. If the fine is paid by the defendant to the County Clerk, the Constable does not collect it and, therefore, he would not be entitled to any commission on the fine collected by the County Clerk. The commission allowed to a Sheriff or Constable under the provisions of Article 951, supra, is for collecting the money due the State or county and is to compensate him for his services in making the collection. If the service is not rendered, he cannot collect any commission because he did not render any service. This rule also applies to the collection of all fees allowed county and precinct officers. (Art. 365, P.C.)

(b) A fine is not collected within the meaning of Article 951 until the amount thereof has been paid in money to some officer authorized by law to collect it. Such officer collecting the fine must account for the same and otherwise comply with the provisions of Articles 944-949, C.C.P. Your attention is also invited to Articles 782-791, 917-920, C.C.P., and Article 781a, 1019 and 1027, V.C.C.P.

(c) In view of the foregoing, it is apparent that your third question should be answered in the negative.

In furtherance of this discussion on commissions allowed officers, we refer you to Article 934a, Vernon's Penal Code. Section 9 thereof provides as follows:

"All moneys collected under the provisions of this Act, or because of fines paid for violation of the commercial fish-

ing laws, shall be remitted to the Game, Fish and Oyster Commission at its office in Austin, Texas, not later than the tenth day of the month following their collection, and shall be deposited by the Game, Fish and Oyster Commission in the State Treasury to the credit of a special fund designated as 'Fish and Oyster Fund.'"

In an opinion numbered 0-5334, a copy of which is enclosed herewith, it was held that all moneys collected under the provisions of Article 934a (Commercial Fishing Law), Vernon's Penal Code, or for fines paid for violations of this Article, must be remitted to the Game, Fish and Oyster Commission at its office in Austin, Texas. Neither the County Attorney, County Clerk, Sheriff, Constable or any officer is entitled to collect any commission on fines assessed and collected for violations of Article 934a.

SUMMARY

1. A County Attorney is entitled to ten (10%) per cent of all fines collected for the State and county upon judgments recovered by him (Art. 950, C.C.P.), in addition to the fee allowed him for representing the State in misdemeanor cases. If compensated on a salary basis, such fees must be deposited in the Officers' Salary Fund pursuant to Article 3912e, V.A.C.S. If on a fee basis, such fees may be retained and accounted for in conformity with law.
2. Under Article 951, C.C.P., a Constable is entitled to five (5%) per cent of any money collected for the State and County, if he actually collects the money on which he claims five (5%) per cent.
3. No officer is entitled to a commission on fines assessed for violations of Article 934a (Commercial Fishing Law), Vernon's Penal Code.
4. A fine is not collected within the meaning of Article 951, C.C.P., until the

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amount thereof has been paid in money to some officer authorized by law to collect it.

5. A fine assessed upon a plea of guilty does not constitute the collection of a fine within the meaning of Article 951, C.C.P.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Burnell Waldrep
Burnell Waldrep
Assistant

BW:djm:lh

APPROVED: March 6, 1947

Price Daniel
ATTORNEY GENERAL