



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL**  
ATTORNEY GENERAL

April 6, 1951

Hon. Austin Guest  
County Attorney  
Red River County  
Clarksville, Texas

Opinion No. V-1165

Re: Fees to which a Justice  
of the Peace is entitled  
in connection with hold-  
ing inquests.

Dear Sir:

Your request points out that under Article 1053, V.C.C.P., a justice of the peace is entitled to a fee of \$10.00 for an inquest on a dead body. You then ask the following questions:

"Where a Justice of the Peace, during his twelve year tenure of office, held various inquests and filed his claim with the court for a fee of \$5.00 which was duly paid by the court without knowing the fee to which he was entitled under the above article, can he now file claim for the additional sum of \$5.00 for each inquest and be paid for the same?"

"Where an inquest is held on two dead bodies at the same time occurring from the same cause, is the Justice of the Peace entitled to a fee for each dead body?"

Article 1053, V.C.C.P., prior to 1947, provided in part:

"A justice of the peace shall be entitled, for an inquest on a dead body, including certifying and returning the proceedings to the proper court, the sum of five dollars, to be paid by the county.  
. . ."

In 1947, this portion of Article 1053 was amended by House Bill 217, Acts 50th Leg. 1947, ch.369, p.745, to provide:

"A Justice of the Peace shall be entitled, for an inquest on a dead body, including certifying and returning the

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proceeding to the proper court, the sum of Ten Dollars (\$10), to be paid by the county. . . ."

House Bill 217, supra, became effective on June 12, 1947. Therefore, since June 12, 1947, a justice of the peace has been entitled to a fee of ten dollars for an inquest on a dead body.

It was held in Attorney General's Opinion V-936 (1949) that

"The two year statute of limitations is applicable to recovery of the balance of delinquent fees due the District Clerk in a suit against the county, and the statute of limitations will begin to run on the date the District Clerk collected delinquent fees reported for a previous year."

It is our opinion that the principle of law announced in Attorney General Opinion V-936 (1949) is equally applicable to your request. In answer to your first question, therefore, it is our opinion that the justice of the peace mentioned in your request may collect an additional five dollars for each inquest held since June 12, 1947 for which he received a fee of only \$5.00, provided such fees are not barred by the two-year statute of limitation. In this connection, we wish to point out that limitation is a matter of affirmative defense which may be waived by the county. Travis County v. Matthews, 235 S.W.2d 691, 698 (Tex.Civ.App. 1950, error ref. n.r.e.); Att'y Gen. Op. 0-3564 (1941); Letter Opinion to Hon. Jackson S. Webb, County Attorney of Bastrop County, dated November 1, 1949.

Your second question is answered by Attorney General's Opinion 0-4468 (1942), wherein it is stated:

"3. If the justice determined that he should hold separate inquests over each of the six dead bodies, and did hold such six separate inquests performing the services and duties required by Articles 975, 978 and 987, he would be entitled to an inquest fee of \$5 (now \$10) for each proceeding and in this case a total of \$30.00 (now \$60).

"4. If the justice determined that he should hold one joint inquest proceeding and did hold only one inquest proceeding on the six dead bodies and certified only one inquest proceeding, performing the services and duties required by Articles 975, 978 and 987, he would only be entitled to a \$5 fee (now \$10)." (Matter in parenthesis added.)

You are advised, therefore, that where one inquest is held by a justice of the peace on two bodies, the justice of the peace is entitled to only one inquest fee of ten dollars.

SUMMARY

Since June 12, 1947, justices of the peace have been entitled to a fee of ten dollars for each inquest held. (Art. 1053, V.C.C.P., as amended.) Where a justice of the peace has collected only five dollars for inquests held subsequent to June 12, 1947, he may collect an additional five dollars for each of such inquests provided such fee is not barred by the two-year statute of limitation. Att'y Gen. Op. V- 936 (1949). A justice of the peace is entitled to only one inquest fee of ten dollars for one inquest on two bodies. Att'y Gen. Op. 0-4468 (1942).

APPROVED:

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JR:mw

Yours very truly,

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