



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

April 20, 1953

Hon. James A. Doherty  
County Attorney  
San Augustine County  
San Augustine, Texas

Letter Opinion No. MS-23

Re: Payment of County Attorney's  
commissions, when criminal  
judgments are paid, to the  
incumbent County Attorney or  
to the person who was County  
Attorney when the judgment  
was entered.

Dear Sir:

Your question is substantially as follows:

Is the retiring County Attorney who prosecuted criminal cases to final judgments entitled to the commission allowed by law, when the costs and fines are paid over to the incumbent County Attorney?

San Augustine County has a population of 8,837 inhabitants according to the last preceding Federal census, and its county officers are compensated on a fee basis. You are advised that in accordance with the Attorney General's Opinions 0-1679 (1939) and 0-2957 (1941) copies of which are enclosed, the County Attorney who prosecuted the suits to final judgment is entitled to receive the commissions on fines in such suits when collected by the incumbent County Attorney, provided that the retired County Attorney did not receive his maximum fees of office for that year. Further, the retired County Attorney is not entitled to any fees that are paid after one year from the date that he ceases to hold office, but on the contrary they should be paid into the county treasury. Art. 3892, V.C.S.

In the case of Flynt v. Jones County, 50 S.W. 203 (Tex.Civ.App. 1899) cited by you, the retired County Attorney had prosecuted the case in the trial court, but the case was appealed and no final judgment was rendered until after his term of office had expired. Hence, the court held that the incoming County Attorney was entitled to the commissions on the judgment that was made final by the incoming County Attorney.

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This is further clarified by the court in McHugh v. Reese, 149 S.W. 743 (Tex.Civ.App. 1912) wherein the court said "we think the principal announced in the case of Flynt v. Jones County, when considered in connection with the language of the article above mentioned, show most clearly that he who is clerk at the time the final judgment is rendered is entitled to the 5 per cent provided for in said article."

If any of the judgments in the cases to which you refer did not become final until after you assumed the duties of County Attorney, then you are entitled to receive the commissions in those cases.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By  
B. Duncan Davis,  
Assistant

BDD:am:wb