



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

date 10-17-61

October 17, 1961

Honorable Tom Blackwell
County Attorney
Travis County
Austin, Texas

Opinion No. WW-1166

Re: Whether the sheriff's office is allowed a fee of \$1.00 on each and every defendant named in the petition and served with a citation under Sec. 5a, of Article 2460a, V.C.S., and related questions.

Dear Mr. Blackwell:

You have requested an opinion on the following two questions:

(1) "Under Sec. 5a, Article 2460a of the Vernon's Civil Statutes of the State of Texas, is the office, by the officer serving the citation, allowed a fee of \$1.00 on each and every party named in the petition and served.

(2) "Under Sec. 5, Article 2460a of the Vernon's Civil Statutes of the State of Texas, is the court in which the Small Claims suit filed limited to charge only \$1.00 for the citation fee even though more than one party is served in the same county or in different counties."

With reference to these questions, Section 5a of Article 2460a, Vernon's Civil Statutes, reads as follows:

"Sec. 5a. A fee of One Dollar (\$1) shall be charged for the service of citation provided for in Section 5 and shall be accountable as a fee of office by the officer serving citation."

Section 5 of Article 2460a reads in part as follows:

"Sec. 5. . . . The Two Dollar (\$2) filing fee, provided for in this Section, the Three Dollar (\$3) jury fee provided for in Section 11 of this Act and the One Dollar (\$1) citation fee provided for in Section 5a shall constitute

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the only fees or costs authorized to be charged in the Small Claims Court; . . ."

Article 2460a creates new courts in this state and prescribes their jurisdiction and venue, and in addition, the fees which may be charged. Originally, Section 5 provided for only the Three Dollar (\$3) jury fee and the Two Dollar (\$2) filing fee. In 1955, Section 5a was added and Section 5 amended to include the One Dollar (\$1) citation fee. Acts, 1955, 54th Leg., p. 571, ch. 187, sec. 2. (See Attorney General's Opinion MS-80 (1953).)

In Attorney General's Opinion S-83 (1953), a question arose concerning the jury fee and filing fee, then the only two fees authorized by the statute. The opinion held that the only fees authorized by the statute were the jury and filing fees, and no fee was authorized to be charged as a citation fee, and none could be charged.

Your attention is called to the present wording of the statute. It states that the only fees authorized are those listed, and in Section 5a states that a fee of One Dollar (\$1) shall be charged for service of citation. In Attorney General's Opinion S-83, supra, reference was made to the case of McCalla v. City of Rockdale, 112 Tex. 209, 246 S.W. 654 (1922), which held that unless a fee is provided by law for an official service required to be performed and the amount of the fee fixed by law none can be lawfully charged. (See also Nueces County v. Currington, 139 Tex. 297, 162 S.W.2d 687 (1942).) Furthermore, an officer may be required by law to perform specific services for which no compensation is provided. Mc Calla v. City of Rockdale, supra.

We are of the opinion that your first question should be answered negatively, and the second answered in the affirmative. Attorney General's Opinion S-83, supra, pointed out the reasoning here, which in part reads:

"The emergency clause of House Bill 495, 53rd Legislature, states that because many citizens are denied justice because of the present expenses and delay of litigation creates an emergency. Therefore, one of the main purposes in creating the Small Claims Courts was to reduce the cost of litigation."

If the Legislature had intended that the full citation fee would be allowed for every party served, we believe they would have spelled it out in the statute. However, they did not, but provided for only "a fee of One Dollar."

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Consequently, you are informed that it is our opinion that under Sec. 5a of Article 2460a, V.C.S., the office and officer serving the citation are allowed only a single One Dollar (\$1) fee, regardless of the number of parties named in the petition and served. Further, under Sec. 5 of Article 2460a, V.C.S., the Small Claims Court is authorized to charge only One Dollar (\$1) for the citation fee, regardless of the number or location of the parties served.

S U M M A R Y

Under Sections 5 and 5a of Article 2460a, V.C.S., only a single One Dollar (\$1) citation fee may be charged, regardless of the number and location of the parties served.

Very truly yours,

WILL WILSON
Attorney General of Texas



By Eugene B. Smith
Assistant

EBS:dhs

APPROVED:

OPINION COMMITTEE
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Winston Crowder
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REVIEWED FOR THE ATTORNEY GENERAL
BY: Houghton Brownlee, Jr.