



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

July 25, 1973

The Honorable Royce Adkins
District Attorney
39th Judicial District
Haskell, Texas 79521

Opinion No. H- 69

Re: Whether Court Reporter
is entitled to be paid for
preparing a Statement of
Facts in connection with
an application for writ
of habeas corpus under
Article 11.07, V. C. C. P.

Dear Mr. Adkins:

Your letter requesting our opinion asks whether a court reporter who prepares a transcript of the evidence at a hearing on a writ of habeas corpus is entitled to be compensated for it by the county.

Article 11.07, Vernon's Code of Criminal Procedure, governing the procedure for taking evidence on writs of habeas corpus, in pertinent part reads as follows:

"It shall be the duty of the official court reporter of the district judge or judges so designated to forthwith prepare a narration of the facts adduced in evidence upon any such hearing and transmit the same, together with the judge's finding of fact and conclusions of law, to the clerk of the Court of Criminal Appeals within ten days of the date of such hearing."

As your request notes, Article 11.07 fails to specifically provide payment to the court reporter in the case of an indigent petitioner, as compared to the provisions of Article 40.09, V. C. C. P., (dealing with the preparation of a Statement of Facts for use on direct appeal from the trial court):

"A party desiring to have included in the record a transcription of notes of the reporter shall have the responsibility of obtaining such transcription and furnishing same to the clerk in duplicate in time for inclusion in the record and defendant shall pay therefor. The court will order the reporter to make such transcription without charge to the defendant if the court finds, after hearing in response to affidavit by defendant, that he is unable to pay or give security therefor. Upon certificate of the court that this service has been rendered, payment therefor shall be made from the general funds by the county in which the offense is alleged to have been committed. The court reporter shall report any portion of the proceedings requested by either party or directed by the court. (emphasis added).

There are no Texas cases dealing with this particular situation. However, there is authority indicating that court reporters may obtain compensation for preparing a transcript of proceedings even if not a part of his official duties. See Attorney General's Opinion No. V-976 (1949).

In McCoy v. State, 2 S. W. 2d 242 (Tex. Crim. 1928), it was held that a court reporter may have official duties which extend beyond the express statutory requirements which would rest largely within the discretion of the trial court. Attorney General's Opinion No. WW-702 (1959) stated that services for taking and transcribing depositions for the State could be legally paid for by the Comptroller in accordance with the fees prescribed in Article 2324, V. T. C. S. Obviously the question presented in your request is not answered directly by these authorities since there is the express statutory requirement of Article 11.07 that the court reporter prepare a Statement of Facts.

Article 16.09, V. C. C. P., requires the reducing to writing of testimony given at an examining trial. As noted in Attorney General's Opinion No. M-303 (1968):

" . . . [A]n official appointed court reporter who is required by the Magistrate to transcribe and give the court the 'original' Statement of Facts is entitled to reasonable compensation for his services to the court aside from any private arrangement he may have with defense counsel.

* * *

"The examining trial is an official hearing authorized by law. Once a reporter is officially appointed by the Magistrate his Statement of Facts become the work product of the court and may not be withheld for the private advantage of defense counsel."

An Article 11.07 habeas corpus hearing is "an official hearing authorized by law." The court reporter's Statement of Facts becomes "the work product of the court." Therefore such transcripts should be on an equal basis with transcripts of an examining trial (Attorney General Opinion V-976 (1949), a tape recording of a radio program (Attorney General Opinion WW-874 (1960) when ordered by the district attorney. See Attorney General's Opinion WW-1334 (1962).

It is our opinion, therefore, that a court reporter who prepares a statement of facts reflecting the testimony given at a hearing on a writ of habeas corpus is entitled to be compensated for it by the State or County.

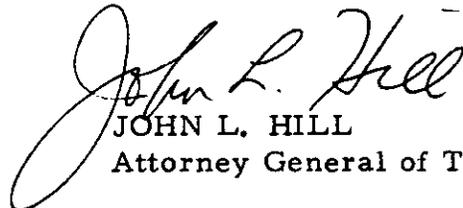
SUMMARY

A court reporter who prepares the narration of the facts adduced in evidence at a hearing on a writ of

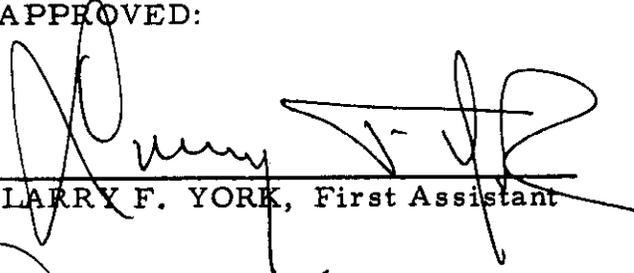
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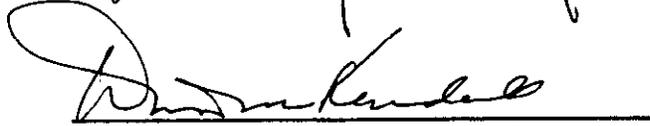
habeas corpus under Article 11.07, V. T. C. C. P.,
is entitled to be compensated for its preparation
by the State or County.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee