



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL  
ATTORNEY GENERAL

September 15, 1977

Honorable Joe Resweber  
County Attorney  
Harris County Courthouse  
Houston, Texas 77002

Opinion No. H-1054

Re: Whether a sheriff or constable can recover the cost of postage incurred when service of citation is by mail.

Dear Mr. Resweber:

You have requested our opinion concerning whether a sheriff or constable can recover the cost of postage incurred when service of citation is by mail.

Article 3933a, V.T.C.S., provides in part:

Sheriffs and Constables shall receive the following fees:

For each person, corporation or legal entity, on whom service of citation, subpoena, summons, or process not otherwise provided for, is performed and return made, including mileage, if any, a fee of

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|-------------------------|--------|
| (a) Small Claims Courts | \$4.00 |
| (b) All other Courts    | \$8.00 |

Rule 106, Tex. R. Civ. P., provides for personal service, substituted service, service by mail, "or in any other manner which will be reasonably effective to give the defendant notice of the suit." Rule 116, Tex. R. Civ. P., provides for citation by publication. In Cook v. Jones, 521 S.W.2d 335 (Tex. Civ. App. -- Dallas 1975, writ ref'd n.r.e.), the court stated in dicta that the sheriff or constable could normally recover the costs of publication "as he may charge a fee for serving other citations." 521 S.W.2d at 338. Apparently the court viewed Rule 116 as providing for service not contemplated under article 3933a. However, article 3933a was clearly intended to apply to personal service, and service by mail is provided for by the same Rule 106.

In Attorney General Opinion S-87 (1953) at 2 this office stated:

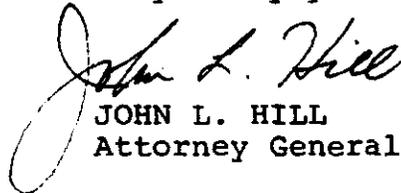
Fee statutes are strictly construed and fees are not permitted by implication. Binford v. Robinson, 112 Tex. 86, 244 S.W. 807 (1922); McCalla v. City of Rockdale, 112 Tex. 209, 246 S.W. 654 (1922).

In light of the general rule noted in S-87 and the provision for personal service and service by mail in the same rule, in our opinion article 3933a was intended to apply to service by mail. Accordingly, a sheriff or constable may receive only the fees specified in article 3933a for service of citation by mail; he may not recover the cost of postage.

S U M M A R Y

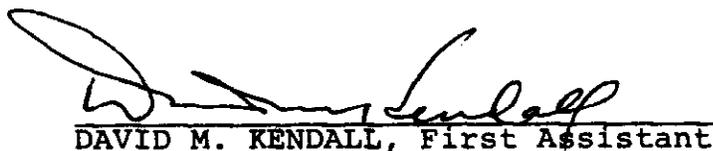
The fee for service of citation by mail is governed by article 3933a, V.T.C.S. A sheriff or constable may not recover the costs of postage in addition to the fees authorized by article 3933a.

Very truly yours,



JOHN L. HILL  
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman  
Opinion Committee

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