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Office of the
Criminal District Attorney
Bastrop County, Texas

OPINION COMMITTEE
February 4, 2000

RQ-0184-JC

Office of the Attorney General
Opinion Division
P.O. Box 12548
Austin, Tx 78711-2548

FILE # ML-41267-00
I.D. # 41267

REQUEST FOR ATTORNEY GENERAL OPINION

Question: Whether inmate convicted of a Class C Misdemeanor being held in a county jail as a result of his failure to pay the assessed fine should be credited in the amount of \$100 per day pursuant to Article 45.048 of the TEXAS CODE OF CRIMINAL PROCEDURE, or \$50 per day pursuant to Article 43.09 of the TEXAS CODE OF CRIMINAL PROCEDURE?

Facts: The Bastrop County Jail is currently crediting to all inmates convicted of a crime who fail to pay their fine an amount of only \$50 per day. This policy includes those inmates convicted of Class C Misdemeanors.

Law: The newly inacted Article 45.048 recites as follows:

Art. 45.048 Discharged from Jail

A defendant placed in jail on account of failure to pay the fine and costs shall be discharged on habeas corpus by showing that the defendant:

- (1) is too poor to pay the fine and costs; or
- (2) has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of not less than \$100 for each day or part of a day of jail time served.

This statute appears to be in direct conflict with Article 43.09(a) of the TEXAS CODE OF CRIMINAL PROCEDURE, which recites as follows:

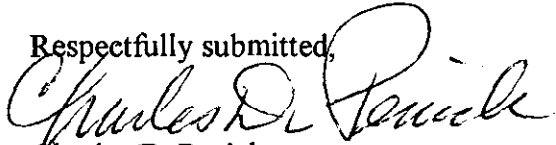
Art. 43.09. [793] [878] [856] Fine discharged

(a) When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine or is confined in a jail after conviction of a felony for which a fine is imposed, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the county jail industries program, in the workhouse, or on the county farm, or public improvements and maintenance projects of the county or a political subdivision located in whole or in part in the county, as provided in the succeeding article; or if there be no such county jail industries program, workhouse, farm, or improvements and maintenance projects, he shall be confined in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him; rating such confinement at \$50 for each day and rating such labor at \$50 for each day; provided, however, that the defendant may pay the pecuniary fine assessed against him at any time while he is serving at work in the county jail industries program, in the workhouse, or on the county farm, or on the public improvements and maintenance projects of the county

or a political subdivision located in whole or in part in the county, or while he is serving his jail sentence, and in such instances he shall be entitled to the credit he has earned under this subsection during the time that he has served and he shall only be required to pay his balance of the pecuniary fine assessed against him. A defendant who performs labor under this article during a day in which he is confined is entitled to both the credit for confinement and the credit for labor provided by this article.

The Bastrop County Criminal District Attorney does respectfully request an opinion resolving this apparent conflict.

Respectfully submitted,

A handwritten signature in cursive script that reads "Charles D. Penick". The signature is written in black ink and is positioned above the printed name.

Charles D. Penick

Criminal District Attorney