



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

C. MANN  
ATTORNEY GENERAL

February 23, 1939

Hon. Leo C. Buckley  
County Attorney  
Zapata County  
Zapata, Texas

Dear Sir:

Opinion No. O-356  
Re: The amount of the justice of the  
peace trial fee in criminal cases  
in counties of twenty thousand or  
less.

This will acknowledge receipt of your letter  
of February 15, 1939, in which you request the opinion  
of this Department on the following question:

"I should greatly appreciate your ad-  
vising me, to-wit: In misdemeanor cases  
in Justice Court, what is the correct jus-  
tice of the peace fee to be taxed as costs?  
Article 1052 (CCP) as amended provides that  
in counties of 20,000 or less in such cases  
'the Justice of the Peace shall receive a  
trial fee of Three Dollars'. Article 1074  
(CCP), as amended, sets out that 'In each  
case of conviction...in the Justice Court  
the trial fee shall be the sum of Four Dol-  
lars'. Kindly explain the apparent dis-  
crepancy between these statutes, which were  
both passed at the same time (Acts 1929,  
41st Leg., 1st C. S.)"

The pertinent parts of Article 1052, C. C. P.  
of Texas, 1925, are as follows:

"Three Dollars shall be paid by the  
county to the County Judge, or Judge of the  
Court at Law, and Two Dollars and fifty cents  
shall be paid by the county to the Justice of

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the Peace, for each criminal action tried and finally disposed of before him. Provided, however, that in all counties having a population of 20,000 or less, the Justice of the Peace shall receive a trial fee of Three Dollars."

Article 1074, C. C. P. of Texas, 1925, is as follows:

"In each case of conviction in a County Court, or a County Court at Law, whether by a jury or by a Court, there shall be taxed against the defendant or against all defendants, when several are held jointly, a trial fee of Five Dollars, the same to be collected and paid over in the same manner as in the case of a jury fee, and in the Justice Court the trial fee shall be the sum of Four Dollars."

The above Article 1052 is one setting and establishing the fee for the justice of the peace in criminal cases and sets such fee to be paid him at \$2.50 in counties of more than twenty thousand population and at \$3.00 in counties of less than twenty thousand population.

Article 1074, above referred to, on the other hand deals not with the question of fees to be paid to the justice of the peace but rather with a matter of costs to be charged and assessed against a defendant convicted in a criminal action. It provides that the trial fee in the justice court shall be \$4.00 and that "the same to be collected and paid over in the same manner as in the case of a jury fee." This means that such fee of \$4.00 shall be paid over to the county treasurer and out of such sum the justice of the peace shall receive the sum of \$3.00 in counties of less than twenty thousand, as provided by Article 1052, C. C. P.

It is, therefore, the opinion of this Department and you are so advised that there is no conflict between Articles 1052 and 1074, C. C. P., and that the correct amount to be taxed as costs by the justice of the peace as his trial fee, in event of conviction either

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by the court or jury, is \$4.00 and that out of such costs so assessed and collected, the justice of the peace is entitled to the sum of \$3.00 in counties of less than twenty thousand population as his fee, the other one dollar to be kept and retained by the county.

Trusting that this satisfactorily answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Lloyd Armstrong*

Lloyd Armstrong  
Assistant

LA:AW

APPROVED:

*Genes C. Mann*  
ATTORNEY GENERAL OF TEXAS

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