



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Mr. E. A. Hodges
County Auditor
Williamson County
Georgetown, Texas

Dear Sir:

Opinion No. 0-404
Re: Sheriff's and Constable's fees in
misdemeanor examining trials.

Your request for opinion upon the following question:

"Would the sheriff or constable be allowed mileage in an examining trial in a misdemeanor case in addition to the \$3.00 (not exceeding \$3.00) as set out under Article 1072 of the Code of Criminal Procedure?"

has been received by this Department.

Paragraph 2 of Article 1020 of the Code of Criminal Procedure of Texas reads as follows:

"Sheriffs and Constables serving process and attending any examining court in the examination of any felony case, shall be entitled to such fees as are fixed by law for similar services in misdemeanor cases in County Court to be paid by the State, not to exceed four and no/100 (\$4.00) Dollars in any one case, and mileage actually and necessarily traveled in going to the place of arrest, and for conveying the prisoner or prisoners to jail as provided in Articles 1029 and 1030, Code of Criminal Procedure, as the facts may be, but no mileage whatever shall be paid for summoning or attaching witnesses in the county where case is pending. Provided no sheriff or constable shall receive from the State any additional mileage for any subsequent arrest of a defendant in the same case, or in any other case in an examining court or in any district court based upon the same charge or upon the same criminal act, or growing out of the same criminal transaction, whether the arrest is made with or without a warrant, or before or after indictment, and in no event shall

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he be allowed to duplicate his fees for mileage for making arrests, with or without warrant, or when two or more warrants of arrest or capiases are served or could have been served on the same defendant on any one day."

Article 1072 of the Code of Criminal Procedure of Texas reads as follows:

"Sheriffs and constables serving process and attending any examining court in the examination of a misdemeanor case shall be entitled to such fees as are allowed by law for similar services in the trial of such cases, not to exceed three dollars in any one case, to be paid by the defendant in case of final conviction."

You will note that paragraph 2 of Article 1020 of the Code of Criminal Procedure provides a manner in which sheriffs and constables on the fee system may collect mileage in felony examining trial cases from the State of Texas. You will also note that Article 1072 of the Code of Criminal Procedure prescribes the amount of \$3.00 as the limit of fees which the sheriff and constable may receive in misdemeanor examining trial cases. It will be further noted that there is no provision whatever made in Article 1072 of the Code of Criminal Procedure for the payment of any mileage to the sheriff and constable. It will be noted further that the fees charged in Article 1072, Code of Criminal Procedure, are charged against the defendant and not against the State of Texas, as in Article 1020.

You are, therefore, respectfully advised that it is the opinion of this Department that the sheriff or constable would not be allowed mileage in an examining trial in a misdemeanor case in addition to the sum of \$3.00 or an amount less than \$3.00, as set out under Article 1072 of the Code of Criminal Procedure. It is the opinion of this Department that the sheriff or constable cannot charge or collect more than \$3.00 as his fees in an examining trial in a misdemeanor case.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

(signed)
Wm. J. Fanning
Assistant

WFF:AW

APPROVED:

Gerald C. Mann (signed)
ATTORNEY GENERAL OF TEXAS