



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

Gerald C. Mann
~~YULE WILSON~~
ATTORNEY GENERAL

Hon. Robert D. Penn
County Attorney
Reeves County
Pecos, Texas

Opinion No. O-1144
Re: Is the County Judge entitled to a
three dollar fee in a civil case,
where the plaintiff dismisses the suit
in vacation, before an answer is filed
and pays the costs?

Dear Sir:

Your request for an opinion upon the above stated ques-
tion has been received by this department.

We quote from your letter as follows:

"A question has arisen in this County regarding
the proper charge for a fee of office by the County
Judge in a civil case under the following facts:

"A civil suit was filed in County Court but no
citation was issued and several days later upon set-
tlement of the suit the Plaintiff desired to pay the
costs and dismiss the suit in vacation by notation on
the docket, as no answer had been filed. The ques-
tion has arisen as to whether in such a case the
County Judge's fee of \$3.00 should be charged. Arti-
cle 3926, R.C.S., 1925, provides for a fee of \$3.00
for the County Judge 'for each civil case finally
disposed of by him by trial or otherwise' but as the
case was dismissed in vacation and the County Judge
has had to enter no judgment of any kind, the Plain-
tiff questions his right to a fee.

"I would appreciate your advice as to whether
or not in a situation such as this the Judge is en-
titled to a fee."

Article 3926, Revised Civil Statutes of Texas, in
part, reads as follows:

"The county judge shall also receive the follow-
ing fees:

"1. ***

"2. *** For each civil cause finally disposed of
by him by trial or otherwise, three dollars, to be

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taxed against the party cast in the suit;
***"

Article 2089, Revised Civil Statutes of Texas, reads as follows:

"The plaintiff may enter a discontinuance on the docket in vacation, in any suit wherein the defendant has not answered, on the payment of all costs that have accrued thereon."

You are, therefore, respectfully advised that it is the opinion of this department, under the facts stated in your letter, the county judge would not be entitled to a three dollar fee in a civil case dismissed by the plaintiff in vacation before any answer was filed and where the plaintiff paid all costs that had accrued thereon.

Trusting that this answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Wm. J. Fanning
Wm. J. Fanning, Assistant

APPROVED JUL 22, 1939
/s/ W. F. Moore
FIRST ASSISTANT ATTORNEY GENERAL

APPROVED: OPINION COMMITTEE
BY: T.P.R., CHAIRMAN

WmJF:ob:wb