OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. L. I. Geren
County Attorney
Limestone County
Groesbeck, Texas

Dear Sir: Attention: Clarence Ferguson

Opinion No. C-1251
Re: Under Article 1052, C.C.P., providing that the justice of the peace shall be paid $2.50 for each criminal action tried and finally disposed of before him, when is the justice of the peace entitled to his trial fee where deferred judgment bond is filed by the defendant as provided by Article 698, C.C.P.?

Your request for opinion upon the above stated question has been received and carefully considered by this department.

Article 1052, Code of Criminal Procedure, reads 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 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. Such Judge or Justice shall present to the Commissioners' Court of his county at a regular term thereof, a written account specifying each criminal action in which he claims such fee, certified by such Judge or Justice to be correct, and filed with the County Clerk. The Commissioners' Court shall approve such account for such amount as they find to be correct, and order a draft to be issued upon the County Treasurer in favor of such judge or justice for the amount so approved. Provided the

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NO COMMUNICATION IS TO BE CONSTRUED AS A DEPARTMENTAL OPINION UNLESS APPROVED BY THE ATTORNEY GENERAL OR FIRST ASSISTANT

Commissioners' Court shall not pay any account or trial fees in any case tried and in which an acquittal is had unless the State of Texas was represented in the trial of said cause by the County Attorney, or his assistant, Criminal District Attorney or his assistant, and the certificate of said Attorney is attached to said account certifying to the fact that said cause was tried, and the State of Texas was represented, and that in his judgment there was sufficient evidence in said cause to demand a trial of same."

Article 698, Code of Criminal Procedure, reads as follows:

"On each verdict of acquittal or conviction, the proper judgment shall be entered immediately. If acquitted the defendant shall be at once discharged from all further liability upon the charge for which he was tried; provided that, in misdemeanor cases where there is returned a verdict, or a plea of guilty is entered and the punishment assessed is by fine only, the Court may, on written request of the defendant and for good cause shown, defer judgment until some other day fixed by order of the Court; but in no event shall the judgment be deferred for a longer period of time than six (6) months. On expiration of the time fixed by the order of the Court, the Court or Judge thereof, shall enter judgment on the verdict or plea and the same shall be executed as provided by Chapter 4, Title 9, of the Code of Criminal Procedure of the State of Texas. Provided further, that the Court or Judge thereof, in the exercise of sound discretion may permit the defendant where judgment is deferred, to remain at large on his own recognizance, or may require him to enter into bond in a sum at least double the amount of the assessed fine and costs, conditioned that the defendant and sureties, jointly and severally, will pay such fine and costs unless the defendant personally appears on the day set in the order and discharges the judgment in the manner provided by Chapter 4, Title 9 of the Code of Criminal Procedure of the State of Texas; and for the enforcement of any judgment

entered, all writs, processes and remedies of the Code of Criminal Procedure are made applicable so far as necessary to carry out the provisions of this Article."

Opinion No. O-1759 of this department, holds among other things, that the justice of the peace is entitled to his trial fee when the judgment he renders becomes final in so far as his court and jurisdiction are concerned. For example, if a defendant was tried and found guilty, filed a motion for new trial within the statutory time and the court overruled the motion for new trial and the defendant filed an appeal bond within the statutory time in order to appeal his case from the justice to the county court, the justice's judgment is final in so far as his court is concerned and he is entitled to his fee, regardless of the final outcome of the case in the county court or in the court of criminal appeals. We enclose herewith a copy of opinion No. O-1759 of this department.

You are respectfully advised that it is the opinion of this department that under the facts stated in your question the justice of the peace would not be entitled to his trial fee uhtil the deferred judgment was entered and thereafter the statutory time had elapsed to make it final in so far as his jurisdiction was concerned.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By Wm. J. Fanning

Wm. J. Fanning
Assistant

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ENCLOSURE

APPROVEDAPR 1, 1940

Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY BWB
CHAIRMAN