



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable W. M. Tucker  
County Attorney  
Collingsworth County  
Wellington, Texas

Dear Sir:

Opinion No. O-1773  
Re: Jury Fees - Pay of Jurors  
in Justice Courts.

This department is in receipt of your letter of December 18, 1939, requesting the opinion of this department upon the following questions, to-wit:

"1. Is a jury fee in the Justice Court contingent upon conviction?

"2. Should a jury fee be allowed regardless of the outcome of the case; if so, out of what fund should same be paid in case of acquittal, or where the convicted person serves his time in jail upon conviction?"

Article 1056, Code of Criminal Procedure of Texas, reads as follows:

"Each juror in the district or criminal district court, county court, or county court at law, except special veniremen whose pay is now fixed by law, shall receive three dollars for each day and for each fraction of a day that he may attend as such juror, to be paid out of the jury fund of the county in which he may so serve. Jurors in justice courts who serve in the trial of criminal cases in such courts shall receive fifty cents in each case they sit as jurors, provided that no juror in such court shall receive more than one dollar for each day or fraction of a day he may serve as such juror. Grand jurors shall each receive three dollars for each day and for each fraction

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of a day that they may serve as such."

Article 1057, Code of Criminal Procedure of Texas, reads as follows:

"One summoned who attends as a juror shall receive no pay as a juror if he has not been sworn as such in a case or for the term or week."

Article 1059, Code of Criminal Procedure of Texas, reads as follows:

"The amount due jurors and bailiffs shall be paid by the county treasurer, upon the certificate of the proper clerk or the justice of the peace, stating the service, when and by whom rendered, and the amount due therefor."

Article 1075, Code of Criminal Procedure of Texas, reads as follows:

"If the defendant is convicted in a criminal action tried by a jury in a justice court, a jury fee of three dollars shall be taxed against him."

Article 1076, Code of Criminal Procedure of Texas, reads as follows:

"Only one jury fee shall be taxed against several defendants tried jointly. A jury fee shall be taxed in each trial if they sever and are tried separately."

Article 1077, Code of Criminal Procedure of Texas, reads as follows:

"A jury fee shall be collected as other costs in a case, and the officer collecting it shall forthwith pay it to the county treasurer of the county where the conviction was had."

Article 1628, Revised Civil Statutes of Texas, reads as follows:

"The funds received by the county treasurer shall be classed as follows, and shall be appropriated, respectively, to the payment of all

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claims registered in the first, second and third classes:

"1. All jury fees, all money received from the sale of estrays, and all occupation taxes.

"2. All money received under any of the provisions of the road and bridge law, including the penalties recovered from railroads for failing to repair crossings, and all fines and forfeitures.

"3. All money received, not otherwise appropriated herein or by the commissioners court."

Article 1626, Revised Civil Statutes of Texas, reads as follows:

"Claims against a county shall be registered in three classes, as follows:

"1. All jury scrip and scrip issued for feeding jurors.

"2. All scrip issued under the provisions of the road law or for work done on roads and bridges.

"3. All the general indebtedness of the county, including feeding and guarding prisoners, and paupers' claims."

Article 1066 of the Code of Criminal Procedure (Acts 1876, p. 291), 1925 Edition, which provided fees for the Justice of the Peace in criminal cases contingent upon conviction was repealed by Acts of 1929, Forty-first Legislature of Texas, First Called Session, p. 154, Chapter 54, Section 1. The cases of *Ex parte Kelly*, 111 Cr. R. 54, 10 S.W. (2d) 726, and *Ex parte Biggs*, 111 Cr. R. 653, 13 S.W. (2d) 831, held that a Justice of the Peace whose compensation depended solely upon conviction was disqualified. The Texas Court of Criminal Appeals set aside these convictions.

It is fundamental that no costs or fees may be taxed against a defendant in a criminal case where he is acquitted.

It is also fundamental that our whole system of jurisprudence demands and requires that both judges and

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jurors shall be fair, unbiased, impartial, and must have no pecuniary interest in the conviction of any defendant upon whom they sit in judgment.

You are, therefore, respectfully advised that it is the opinion of this department:

1. No jury fee is taxed as costs against a defendant when he is acquitted.

2. When a defendant is convicted in the justice court of a misdemeanor, a three dollar jury fee is taxed against him as part of the costs.

3. That if such jury fee is taxed and collected it is paid into the County Treasury and placed into the Jury Fund of the county.

4. That jurors who serve in justice court criminal cases are entitled to their statutory pay, regardless of the outcome of the case, and regardless of whether or not a jury fee is collected from the defendant.

5. That in all cases where jurors serve in justice court criminal cases they are entitled to their statutory pay and that the same is to be paid to them by warrant drawn on the County Treasury payable out of the Jury Fund of the county.

Trusting that this satisfactorily answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

BY

*Wm. J. Fanning*  
Wm. J. Fanning  
Assistant

WJF:FG

APPROVED JAN 5, 1940

*Gerard B. Mann*  
ATTORNEY GENERAL OF TEXAS

