



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Hon. George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-1908

Re: What fees would a sheriff be entitled to receive for service of proceeding to a city to secure a defendant and return him for a hearing as stated in the attached letter?

Your recent request for an opinion of this department on the above stated question has been received.

Your letter reads as follows:

"Your opinion as to proper fees, if any, in the following fact situation is respectfully requested:

"A defendant was confined in the State penitentiary authorities for a hearing as he was wanted in another State on a felony charge.

"The District Judge of Wilson County granted a habeas corpus hearing and instructed his sheriff to proceed to Austin, secure the defendant and return him to Wilson County for a hearing.

"What fees would the sheriff be entitled to receive for his service and would same be paid from the appropriation for paying sheriffs and other officers in felony cases?"

You further inform us that while the above mentioned defendant was confined in the State Penitentiary,

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the State of North Carolina placed a "hold over order" for him and when the defendant had served his term in the State Penitentiary he was brought to Austin by the authorities of the penitentiary for an extradition hearing. While the defendant was in the custody of the authorities from the penitentiary at Austin for the above mentioned hearing the attorney for the defendant filed an application for a writ of habeas corpus in the District Court of Wilson County. You also further inform us that the above mentioned defendant was not charged with any offense in the District Court of Wilson County or in any court in the State.

The above mentioned writ of habeas corpus reads as follows:

"WRIT OF HABEAS CORPUS

No. 5,996

**"EX PARTE
NILE (WILL) WRIGHT**

**TO THE WARDEN OF THE TEXAS PRISON SYSTEM AND
ALL EMPLOYEES OF SAID SYSTEM HAVING NILE (WILL)
WRIGHT IN CUSTODY GREETINGS:**

"Whereas, on this the 1st day of November, A. D. 1939, an application for a Writ of Habeas Corpus and release from improper custody having been filed by Nile (Will) Wright, who alleges substantially the following, to-wit: that he is being illegally restrained by the Texas Prison System authorities and that he believes that he will be carried out of the state, or suffer some irreparable injury before he can obtain relief in the usual course of law; and that he has requested a hearing before this Court.

"And whereas, said application for a Writ of Habeas Corpus has been granted by the Honorable S. B. Carr, Judge presiding of the District Court of Wilson County, Texas, made returnable to said Court on the 4th day of November, A. D. 1939, at 10 o'clock A. M.

"Therefore, you are hereby commanded to be and appear before said District Court at the Court House thereof in the City of Floresville, Texas, on the 4th day of November, A.D. 1939, at 10 o'clock A.M., and to then and there produce the body of said Nile (Will) Wright, and show cause, if any you have, why he should not be released from your custody; and the sheriff or any deputy sheriff of Wilson County, Texas, is hereby ordered and directed to take the body of the said Nile (Will) Wright and safely keep him and bring him before this Honorable Court on the hour and date hereinabove set to be dealt with according to law.

"TO THE SHERIFF, CONSTABLE, OR ANY PEACE OFFICER OF THE STATE OF TEXAS, GREETINGS:

"You are hereby commanded that you execute and make due return of this writ, as is required by law, and that you take and bring the said Nile (Will) Wright before the Honorable Judge of said Court as hereinabove directed.

"Witness, M. M. Hughes, Clerk of the District Court of Wilson County, Texas, at my office at the Court House, in the City of Floresville, Texas, this the 1st day of November, A.D. 1939.

"(Signed) M. M. Hughes
Clerk of the District Court
of Wilson County, Texas

"RETURN OF OFFICER

"Came to hand on the 1st day of November, A.D. 1939, at 4 o'clock P.M. and executed on the 2nd day of November, A.D. 1939, in Travis County, Texas, at 10 o'clock A.M. by delivering to Capt. Ewing Stanley in person, a true copy of this writ; and taking the person of the

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said Nile (Will) Wright in the custody.

"(signed) Mrs. Geo. R. Booth
Sheriff, Wilson County, Texas
By
(signed) D. W. Houck, Deputy

"Mileage \$18.00
180 miles
@ .10
Service 2.00
TOTAL: \$20.00

Article 129, Code of Criminal Procedure, reads as follows:

"Whenever it appears by satisfactory evidence to any judge authorized to issue such writ that any one is held in illegal confinement or custody, and there is good reason to believe that he will be carried out of the State, or suffer some irreparable injury before he can obtain relief in the usual course of law, or whenever the writ of habeas corpus has been issued and disregarded, the said judge may issue a warrant to any peace officer, or to any person specially named by said judge, directing him to take and bring such person before such judge, to be dealt with according to law."

According to the last Federal Census, Wilson County has a population of seventeen thousand six hundred and six (17,606) inhabitants. The county officials of such county are compensated on a fee basis.

Article 1030, Code of Criminal Procedure, reads in part as follows:

"In each county where there have been cast at the preceding presidential election less than 3000 votes, the sheriff or constable shall receive the following fees when the charge is a felony:"

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Section 8 of Article 1030, supra, Code of Criminal Procedure, reads as follows:

"For attending a prisoner on habeas corpus, for each day, four dollars, together with mileage as provided in subdivision 5, when removing such prisoner out of the county under an order issued by a district or appellate judge."

Section 5, as referred to in the above quoted section of Article 1030, supra, reads in part as follows:

"...in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal Census, the following fees shall apply: For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, ten cents;...."

Article 26 of the Penal Code defines "criminal process" as follows:

"The term 'criminal process' is intended to signify any capias, warrant, citation, attachment, or any other written order issued in a criminal proceeding, whether the same be to arrest, commit, collect money, or for whatever purpose used."

Article 163 of the Code of Criminal Procedure provides:

"The judge trying the cause under habeas corpus may make such order as is deemed right concerning the cost of bringing the defendant before him, and all other costs of the proceeding, awarding the same either against the person to whom the writ was directed, the person seeking relief, or may award no costs at all."

The fees allowed and provided for in Article

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Code of Criminal Procedure, supra, are allowed only where the defendant is charged with a felony offense and unless such defendant was so charged Article 1030, Code of Criminal Procedure, supra, would not be applicable. If the defendant was charged with no offense whatsoever the sheriff above mentioned would not be entitled to any fees for his services which would be paid by the State. Therefore, you are respectfully advised that it is the opinion of this department that the State would not be liable for any fees to the Sheriff for the services performed by him in connection with the above mentioned habeas corpus proceeding.

Trusting that the foregoing fully answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ Ardell Williams
Ardell Williams
Assistant

EW:AW

APPROVED FEB 24, 1940

/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS