



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable H. A. Hodges  
County Auditor  
Williamson County  
Georgetown, Texas

Dear Sir:

Opinion No. 0-2389

Re: After a felon is placed in jail in charge of the sheriff does he, the sheriff, have authority to allow the constable, or any other officer, to have charge of the prisoner before he has been tried on the charges for which he was first placed in jail?

Your letter of recent date requesting the opinion of this department on the questions as are herein stated has been received.

We quote from your letter as follows:

"We have an unusual procedure here in regard to the handling of prisoners in felony cases, I shall give you an explanation so you may fully understand the situation.

"Two men were arrested for robbing a store, examining trials held here and the prisoners committed to the sheriff and placed in jail to await the action of the grand jury, and they were later indicted by the grand jury. The sheriff allowed the constable to convey them to Granger for an examining trial there for robbery, they waived the examining trial and were brought back and delivered to the sheriff and placed in jail, the grand jury also indicted them on the Granger cases.

"The officers in this precinct had made the first arrest and filed their claim for the fees and mileage allowed in felony cases, now the constable in the Granger precinct files his claim for fees and the mileage in felony arrests, which if

Honorable H. A. Hodges, Page 2

allowed is double mileage for felony arrests. The defendants being in charge of the Sheriff (Court) I do not think there is any mileage due the constable, also that the waiving of the rights to an examining trial should have been given to them while in jail by the justice of the peace of the Granger precinct.

"Under the above facts I submit the following questions:

"1. After a felon is placed in jail in charge of the sheriff does he, the sheriff, have authority to allow the constable, or any other officer, to have charge of the prisoner before he has been tried on the charges for which he was first placed in jail?

"2. If the sheriff is allowed, under the law, to turn the prisoner over to another officer for examining trials what mileage, if any, is the officer allowed for conveying the prisoner (felony) to the court for trial and what mileage for returning to jail?

"I am of the opinion that all mileage charges cease after a prisoner has been committed to jail and an examining trial has been held, as I see it he is in the custody of the court and the officers are not allowed any additional mileage."

Article 1020, Code of Criminal Procedure, reads in part 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 case 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 1930, Code of Criminal Procedure, as the facts may be, but no

Honorable H. A. Hodges, Page 3

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 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."

The fourth paragraph of said Article 1020, supra, as amended, provides when the fees provided for shall be become due and payable. We quote the pertinent language as follows:

"The fees mentioned in this Article shall become due and payable only after the indictment of the defendant for an offense based upon or growing out of the charge filed in the examining court and upon an itemized account, sworn to by the officers claiming such fees, approved by the judge of the District Court,...."

Article 233, Code of Criminal Procedure, directs the officer executing a warrant of arrest to take the person arrested forthwith before the magistrate who issued the warrant, or before the magistrate named in the warrant. Chapters 3 and 4, Title 5, Code of Criminal Procedure, provides the procedure to be followed, following the action directed by said Article 233. The magistrate shall proceed to hold an examining trial (Art. 245) or the accused waives same (Art. 299). If an examining trial is held after having the evidence the magistrate makes the proper order thereon (Art. 261); if waived, requires bail (Art. 299). He is required to certify the proceedings to the clerk of the proper court.

This department has heretofore ruled that officers are entitled to their statutory fees for services actually performed, even though the defendant waives the examining trial. (Letter opinion, Hon. Everett S. Johnson to Hon. Homer C. DeWolfe, February 27, 1931, Vol. 319, page 190; Hon. Paul D. Page, Jr. to Hon. L. Pharr, November 21, 1929, Vol. 308, p. 96;

Honorable H. A. Hodges, Page 4

Hon. Bruce Bryant to Hon. Geo. H. Sheppard, September 9, 1932, Vol. 338, p. 575)

County officials of Williamson are compensated on an annual salary basis and the precinct officers are compensated on a fee basis. Section 17b, Article 3912e, provides in part:

"In counties wherein the county officers named in this Act are compensated on the basis of an annual salary, the State of Texas shall not be charged with and shall not pay any fee or commission to any precinct officer for any services by him performed, but said officer shall be paid by the County out of the Officers' Salary Fund such fees and commissions as would otherwise be paid him by the State for such services."

This statute controls over the language "to be paid by the State" as used in Article 1020, supra. This has been decided by several letter opinions of this department, to which we adhere. (Letter opinion from Hon. Joe J. Alsup to Mr. R. L. Armstrong, March 31, 1937, Vol. 378, p. 834; Hon. H. I. Williford to Hon. Quincey Hawkins, June 24, 1938, Vol. 382, p. 151, and Opinions Nos. O-704, and O-1002)

Under the facts stated in your inquiry, two men were arrested for robbing a store in Williamson County and an examining trial was held and the prisoners committed to the sheriff and placed in jail and they were afterwards indicted by the grand jury. While they were in jail, after being indicted by the grand jury, they were charged with the offense of robbery at Granger, a town in Williamson County, and the sheriff permitted the constable to carry the prisoners to LaGrange for an examining trial, which the defendants waived. As we understand the facts, the two men were charged with the offense of robbery in two separate and distinct cases and an examining trial was held in one and the examining trial was waived by the defendants in the other case.

Ordinarily, the sheriff is the custodian of prisoners confined in the county jail and is responsible for their safe keeping. It is his duty to hold them until a discharge is lawfully ordered unless they have furnished a bail bond as required by law. However, there is no legal inhibition against the sheriff allowing the constable or any other officer who is

Honorable H. A. Hodges, Page 5

authorized by law to have charge of a prisoner for the purpose of appearing in examining courts or to answer other charges in criminal cases, although the case for which the sheriff originally held the prisoners has not been tried or disposed of.

In answer to your second question, you are respectfully advised that under Article 1020, supra, sheriffs and constables serving any 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 courts, not to exceed \$4.00 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 Article 1029 and Article 1030, Code of Criminal Procedure, as the facts may be. Under the particular facts in this specific case, we are of the opinion that the constable is not only entitled to his fees but to mileage actually and necessarily traveled in conveying the prisoners from the jail to the examining court and from the examining court to jail as provided in Article 1029, Code of Criminal Procedure, as the population of Williamson County is over Forty Thousand (40,000) inhabitants.

Trusting that the foregoing fully answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams  
Assistant

AW:AW

APPROVED MAY 25, 1940

*Gerard B. Mann*

ATTORNEY GENERAL OF TEXAS

