



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable C. Burt Potter  
County Attorney  
San Patricio  
Sinton, Texas

Dear Sir:

Opinion No. 0-2671  
Re: Can a Justice of the Peace  
collect inquest fee when  
he holds inquest upon the  
death of a party who may  
have been unlawfully killed.

We have a letter from H. F. Pape, Justice of the Peace at Gregory, Texas, dated August 19, 1940, in which he inquires whether a Justice of the Peace should hold an inquest and be entitled to his fee where a party was killed in an automobile collision although there were witnesses who saw the killing.

He writes that you called his attention to an opinion of ours, in which we held that a Justice of the Peace was not entitled to an inquest fee if the killing was in the presence of a witness; we presume you had reference to our Opinion No. 0-1274.

The facts in that case revealed that the party was killed by lightning in the presence of one or more other parties. No question of an unlawful killing was involved. We hand you herewith a copy of said opinion.

Subdivision 4 of Article 968, Code of Criminal Procedure, provides that the Justice of the Peace must hold an inquest "when the circumstances of the death of any person are such as to lead to suspicion that he came to his death by unlawful means."

Under the above quoted provision it is the duty of a Justice of the Peace to hold an inquest where the

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circumstances surrounding the death are such as to lead to a suspicion that he came to his death by unlawful means, although there may be any number of persons present at the time the death occurred and the Justice of the Peace would be entitled to receive his inquest fee.

There is no conflict in this holding and the one made by us in Opinion No. 0-1274.

Under said Article 968, there are four separate and distinct conditions under which a Justice of the Peace is not only authorized to but it is his duty to hold an inquest without a jury. The facts surrounding each death would of course govern the question as to whether an inquest must be held by the Justice of the Peace. *Pierson v. Galveston Co.* 131 S. W. (2) 27.

We are writing you instead of Judge Pate because he says you told him about our opinion. We are sending him a copy of this opinion.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED AUG 28, 1940

*Howe Allen*  
FIRST ASSISTANT  
ATTORNEY GENERAL

By

*Geo. W. Barcus*  
Geo. W. Barcus  
Assistant

GWB:rw

