



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Charles H. Slaughter
County Attorney
Martin County
Stanton, T e x a s

Dear Sir:

Opinion No. 0-2917
Re: Fees of county attorney
under facts stated.

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"The writer would appreciate having your opinion based on the following statement of facts.

"A county attorney representing the state in a prosecution in Justice Court, on complaint of disturbing the peace in a private residence, and two defendants are tried jointly, convicted and fined \$100.00 each and costs and appeal taken and pending in the county court, bonds being posted, what are the county attorney's fees under article C.C.P. 1055, Vernon's Annotated Criminal Statutes, 1938 (year)

"The same defendants are charged by complaint for disturbing the peace in a public street of an incorporated town and fined \$100.00 each and costs and appeal taken to county court and bonds posted-pending in the county court. What are the county attorneys fees under Article CCP 1055 Vernon's Annotated Criminal Statutes. 1938 (year)

"Article CCP. 1055, (1938) Vernon's Ann. Criminal Statutes.....The county shall be liable for only one half (costs) where defendant has been tried, and committed, acquitted, OR FOUND

GUILTY AND THE CASE APPEALED; not including commissions, the County Judge shall issue his warrant, upon the County Treasurer in favor of the proper party, and the same shall be paid out of the Road and Bridge fund or other funds.....

"Article CCP 1068 (1925) Vernon's Ann. Civil Statutes.....for each conviction on a plea of guilty, where no appeal is taken, fee of county attorney is \$10.00.

"From Article 1055 CCP, the county attorney representing the State shall be entitled to one half the fee of \$10.00(....and defendant found guilty and the case appealed.....) to be paid by the county and the county judge shall issue the warrant upon the County Treasurer and same shall be paid out of the Road and Bridge fund,.....

"I would appreciate having your opinion on the foregoing."

Opinion No. 0-23 of this department (Conference Opinion No. 0-3032) dated January 11, 1939, held House Bill 727 of the 46th Legislature of Texas unconstitutional. This opinion further held that Article 1055, Code of Criminal Procedure of Texas, 1925, not having been repealed, and the amendatory act being unconstitutional and entirely void, was still the law (at the date of the rendition of the opinion) and that all fee officers were subject to its provisions. We enclose herewith a copy of said opinion which contains a full discussion of said matter.

Article 1055, Code of Criminal Procedure of Texas, 1925, prior to its amendment in 1939 by the Acts of the 46th Legislature of Texas, read as follows:

"The county shall be liable to each officer and witness having costs in a misdemeanor case for only one-half thereof where the defendant has satisfied the fine and costs adjudged against him in full by labor in the workhouse, on the county farm, on the public roads or upon any public works of the county; and to pay such half of such legal costs as may have

been so taxed, not including commissions, the county judge shall issue his warrant upon the county treasurer in favor of the proper party, and the same shall be paid out of the road and bridge fund or other funds not otherwise appropriated."

Article 1055, supra, was amended by the Acts of the 46th Legislature of Texas, effective May 15, 1939. Article 1055, Vernon's Annotated Texas Code of Criminal Procedure, now reads as follows:

"The county shall not be liable to the officer and witness having costs in a misdemeanor case where defendant pays his fine and costs. The county shall be liable for one-half of the fees of the officers of the Court, when the defendant fails to pay his fine and lays his fine out in the county jail or discharges the same by means of working such fine out on the county roads or on any county project. And to pay such half of costs, the County Clerk shall issue his warrant on the County Treasurer in favor of such officer to be paid out of the Road and Bridge Fund or other funds not otherwise appropriated."

Thus we see that prior to May 15, 1939, Article 1055, Code of Criminal Procedure, 1925, governed and that since May 15, 1939 and now, Article 1055, Vernon's Annotated Texas Code of Criminal Procedure, supra, governs.

You will note that the provisions of House Bill 727 of the 45th Legislature of Texas (1937), (held unconstitutional by this department) providing for fees in cases of acquittals and in cases where defendants were convicted and appealed their cases, (cited by you in your letter) were not carried into and made a part of the amended article passed by the 46th Legislature of Texas in 1939.

Under the facts stated the cases of the defendants are now pending in the County Court. No fees are taxable against said defendants at this time nor can they be placed in jail nor can they be worked by the county at this time by

Hon. Charles H. Slaughter, Page 4

virtue of the status of such cases.

You are respectfully advised that it is the opinion of this department that neither the defendants nor the County are at this time liable for any fees to any officers under the facts stated.

Very truly yours

ATTORNEY GENERAL OF TEXAS

BY

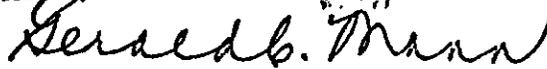


Wm. J. Fanning
Assistant

WmJF:caw

encl.

APPROVED OCT 24, 1940



ATTORNEY GENERAL OF TEXAS

