



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable M.D. Emerson  
County Attorney  
Lamar County  
Paris, Texas

Dear Sir:

Opinion No. 0-2908  
Re: Fees of office - Sheriffs -  
Articles 3808 and 3933, V.A.T.C.S.

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

"I wish to request an official opinion from your office in regard to the matter of fees which should be properly charged by a sheriff for posting notices in a sale of real estate. Since our sheriff is on a salary basis and the money goes to the County, I believe that it is proper under the circumstances to request such opinion.

"The question arises from this situation. In a civil suit, foreclosure was had upon a tract of real estate in Lamar County and order of sale issued. The plaintiff's attorneys sent same to the Sheriff of Lamar County with the request that he execute same, also that he advertise same by newspaper according to law and make his return. In this connection, plaintiff's attorneys also requested the sheriff to mail out four notices to specified parties - this in addition to the publication by newspaper. The sheriff did both, as directed.

"In charging fees for this service, the sheriff charged \$1.00 for the newspaper publication and return, and also charged \$1.00 for each of the notices sent out by him.

"Attorneys for plaintiff contend that the sheriff is not entitled to the \$1.00 fee for the

Honorable M.D. Emerson, Page 2

notices sent out by him in addition the newspaper advertising. In support of their contention, they cite the case of City of San Antonio, vs. Campbell, 56 S.W. 130. They further contend that Article 3808 deals with the required advertising of real property for sale under an order of sale, and that since all requirements are set out in said article, each of the required acts are a part of the advertising, and covered by the \$1.00 charged for 'advertising.' They also cite article 3933, and contend that because the sheriff would have to post three notices if he did not publish by newspaper for which he would be entitled to only \$1.00 for advertising, that by the same token he is required to send out the four additional notices and receive no extra compensation, even though he does this in addition to publishing the notice in a newspaper and making his return for so doing.

"The Sheriff disagrees with these contentions, and asks an opinion in regard to the matter. The sheriff contends that the fee of \$1.00 for advertising covers the newspaper advertising and return, which he has properly attended to. He further contends that, Under Article 3933, as amended in 1937, he is entitled to \$1.00 fee for sending or posting each of the notices he was required by law to either post or mail. He feels that our Legislature never intended to require a sheriff of any county in Texas to perform services for parties to a civil suit - said parties not being The State of Texas nor any of its political sub-divisions - for which he would not be properly compensated. He therefore feels that when the Legislature amended Article 3933 and continued to include in said article the following: 'Posting any other notices required by law and not otherwise provided for....\$1.00', that it was the intention of the Legislature that officers would be compensated for posting or mailing the notices in question accordingly, and that he is justified in charging \$1.00 for each of said notices. (These notices may be either posted or mailed, under the law, but he is required to do one or the other.) The sheriff further contends that, while this article stipulates \$1.00 for posting the advertisements of sale, using the word 'advertisements' in the plural, this refers only to posting the

Honorable N.D. Emerson, Page 3

notices in the event that publication by newspaper is not made.

"With the exception of the case above referred to, *City of San Antonio vs. Campbell*, 56 S.W. 130, which is a very old case, the article in question having been amended without change in spite of said case, we find no authorities on this question. It occurs to us that the position of the sheriff is well taken with reference to the intent of the Legislature that no officer would do work in a civil suit for parties other than the State and its subdivisions. But it appears to us that the question is based entirely upon construction of the article of the statute fixing the fees, that is Art. 3933. It occurs to us that the provision above set out, 'Posting any other notices required by law and not otherwise provided for....\$1.00', might be construed to mean either that the sheriff would receive only \$1.00 for all such notices posted, or that the sheriff would receive \$1.00 for each such notice posted. In cases where the number of notices would be large, this would hardly seem proper, however. In some cases of record, such notices have been known to number more than a hundred, in which event stationery and stamps would not be paid for, or begin to be, from the \$1.00 fee, if these notices were mailed. If posted notices refers to notices mailed - i.e. posted by mail, it would appear that this article applies.

"All this resolves itself into the following questions, which we would appreciate your answering:

"In a civil suit, involving no subdivision of the State, where the Sheriff has advertised the order of sale by newspaper and made proper return, is the Sheriff entitled to compensation for mailing out notices to parties as required by law, under Article 3908, R.C.S. in addition to the \$1.00 allowed for advertising under the provisions of Art. 3933 R.C.S.? If so, is he allowed only \$1.00 for mailing out all such notices required, or is he entitled to \$1.00 for each notice so posted by mail?"

Honorable M.D. Emerson, Page 4

Article 3808, Vernon's Annotated Texas Civil Statutes, reads as follows:

"The time and place of sale of real estate under execution, order of sale, or venditioni exponas, shall be advertised by the officer by having the notice thereof published in the English language once a week for three consecutive weeks preceding such sale, in some newspaper published in said county. The first of said publications shall appear not less than twenty days immediately preceding the day of sale. Said notice shall contain a statement of the authority by virtue of which the sale is to be made, the time of levy, and the time and place of sale; it shall also contain a brief description of the property to be sold, and shall give the number of acres, original survey, locality in the county, and the name by which the land is most generally known, but it shall not be necessary for it to contain field notes. Publishers of newspapers shall receive for publishing said sales fifty cents per square for the first insertion and thirty cents per square for subsequent insertions, to be taxed and paid as other costs; for such publication, ten lines shall constitute a square, and the body of no such advertisement shall be printed in larger type than brevier. No fee for advertising any property in a newspaper under the provisions of this article shall exceed the sum of five dollars. If there be no newspaper published in the county, or none which will publish the notice of sale for the compensation herein fixed, the officer shall then post such notice in writing in three public places in the county, one of which shall be at the courthouse door of such county, for at least twenty days successively next before the day of sale. The officer making the levy shall give the defendant or his attorney written notice of such sale, either in person or by mail, which notice shall substantially conform to the foregoing requirements."  
(Underscoring ours)

Honorable M.D. Emerson, Page 3

Article 3933, Vernon's Annotated Texas Civil Statutes, reads in part as follows:

"Sheriffs and constables shall receive the following fees:

"....

"Levying each execution.....\$1.00  
"Return of execution.....\$1.00

"....

"Posting the advertisements for sale under the execution of any order of sale...\$1.00

"Posting any other notices required by law and not otherwise provided for.....\$1.00

"....

"Collecting money on an execution or an order of sale, when the same is made by a sale, for the first One Hundred Dollars (\$100) or less, four (4) per cent; for the second One Hundred Dollars (\$100), three (3) per cent; for all sums over Two Hundred Dollars (\$200) and not exceeding One Thousand Dollars (\$1000), two (2) per cent; for all sums over One Thousand Dollars (\$1000) and not exceeding Five Thousand Dollars (\$5000), one (1) per cent; for all sums over Five Thousand Dollars (\$5000), one-half of one per cent.

"....."  
(Under scoring ours)

Article 3812, provides for "the posting up" of notices at the courthouse door and other public places, etc.

The case of Howard vs. Fulton, 14 SW 1061, holds that certain notices were posted in accordance with law. We quote from said case as follows:

"The agreed statement upon which the case was submitted in this court shows that the trustee

Honorable M.D. Emerson, Page 6

gave notice of the time, terms, and place of sale, and of the property to be sold as follows: By posting two printed copies of such notice on the boards in the corridor of the court-house in the city of Austin, county of Travis, and state of Texas, said printed notice being about 10 inches in length, and 2 inches in breadth, the sale being made at the west front door of said court-house, where all public sales in the county of Travis are usually made, and the boards on which the notices were posted were in the corridor of the building, about 40 feet from the front door, and in open view from the door and just at the side of the stairway leading to the court-rooms in the second story. The boards on which these notices were placed were provided by the county of Travis for the posting of notices of sheriffs' sales, tax-sales, all notices in probate matters, and all public notices required by law to be posted at the court-house door, and such boards had been provided and used for such purposes, standing in the same place for many years, and notices of trustees' sales had always customarily been posted on these boards. Notices of this character were never permitted to be posted on the door or walls of the house, but on the boards furnished and used for such purposes. These notices were posted, as stated, on December 21, 1887, more than 30 days before the day of sale.....In providing for the posting at the court-house door in the deed of trust under consideration, the parties doubtless intended that the notice should be stuck up at the place for posting legal notices in the city of Austin, such being the place where a poster would most likely be seen by persons desirous of purchasing land at public sale. We concur in the conclusion of the learned judge who tried the case below that the notices of the sale were given in accordance with the terms of the deed of trust, and that it is unnecessary to pass upon any other question in the case. The judgment is accordingly affirmed."

Honorable M.D. Emerson, Page 7

We quote from the case of Nelson vs. State, 75 SW 502, as follows:

"By 'posting as required by law' is meant that the notices must be actually posted the requisite number of days before the election is held. The fact that the notices may have been subsequently torn or blown down would not affect the validity of the election. Where the statute requires the notices to be posted 12 days before the election, if the proof conclusively shows that said posting did occur, then the court, as indicated in the original opinion, is authorized to tell the jury, as a question of law, that the local option law is valid."

We quote from the case of City of San Antonio vs. Campbell, 56 SW 130 (cited by you in your brief) as follows:

"The fourth assignment complains of the judgment in allowing the sum claimed as costs (\$4.50) for notices of the sheriff's sale, because there was no evidence to support such charge. The officer testified, 'I also charged in the sheriff's costs, \$4.50 for notices.' Plaintiff introduced as evidence the return of the sheriff, from which it appears that he served three copies of notices of sale on parties, and the same number on their respective attorneys, making six in all. His testimony shows that this charge was independent of the ordinary posting of the advertisement. We are unable to find any provision allowing the sheriff compensation for the notices required to be given the parties and their attorneys in such cases, and therefore this item was improperly charged."

We quote from the case of Bigham vs. State, 275 SW 149, as follows:

"A sheriff is entitled to such fees as the statutes authorize, and for that reason the fact that the fees allowed may seem large in some instances or small in other instances

Honorable M.D. Emerson, Page 8

cannot enter into a decision construing the statutes authorizing them. The Legislature has enacted the fee bill, and has fixed a maximum sum which a sheriff is entitled to receive in fees, requiring that the excess be paid into the county treasury. The Legislature has also enacted laws regulating and limiting the fees of officers from time to time. The wisdom or unwisdom of these acts is not a matter for the courts to determine." (This case was reversed on other grounds in 280 SW 1062.)

Opinion No. 0-511 of this department holds that a sheriff is entitled to a fee of only \$1.00 for posting the notices of sale involved in said fact situation and was not entitled to any fees for mailing notices of sale. We enclose herewith a copy of said opinion for your convenience.

In view of the foregoing authorities, you are respectfully advised that it is the opinion of this department that the sheriff would not be entitled to charge any fees whatever for mailing out the four notices described in your letter.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

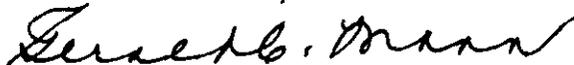


Wm. J. Fanning  
Assistant

WJF:AW

ENCLOSURE

APPROVED DEC 16, 1940



ATTORNEY GENERAL OF TEXAS

