



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Campbell K. Ford  
County Attorney  
San Saba County  
San Saba, Texas

Dear Sir:

Opinion No. O-2937

Re: Who is entitled to the \$10.00  
fee and the \$10.00 commission  
for the disposition of the  
case under the facts set forth  
and related questions?

Your recent request for an opinion of this Department upon the questions as are herein stated has been received.

We quote from your letter as follows:

"I am respectfully asking your opinion upon the following matters, to-wit: .

"On January 1, 1941, I qualified and entered into the duties as County Attorney of San Saba, Texas, as successor to G. A. Walters, a former County Attorney. During his term of office a man plead guilty to unlawfully transporting liquor in San Saba County, Texas, and was fined \$100.00 and costs. By agreement with all officers concerned defendant was permitted to pay the balance in installments of \$25.00 each, and prior to the first of January, during the term of the former County Attorney, the defendant paid into the County Clerk \$75.00 leaving balance due, \$44.00 which has been paid into the County Clerk since I went into office January 1st. The question arises as to who is entitled to the \$10.00 fee and the \$10.00 commission due the County Attorney.

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"Under a ruling to R. E. Beasley, County Auditor, Collins County, January 16, 1940, opinion #1792, it is as follows: "Where only a part of the fine and costs are collected, the money collected should go first to the payment of the cost and the balance, if any, to the amount of the fine." Mr. Walters and I agree that he is entitled to the \$10.00 fee. The question is whether or not he is entitled to the \$10.00 commission on the \$100.00 fine? He claims it is due him because the \$75.00 paid before he went out of office was sufficient to cover the fees and commission. Only \$44.00 has been paid since he went out of office on the fine. Does he get the full \$10.00 commission, or is he entitled to the ten per cent of the fine that was paid in and am I entitled to ten per cent of the \$44.00 that has been paid since I went in? The clerk is holding the \$10.00 commission subject to your ruling.

"Further suggesting that during Mr. Walter's term of office several cases were appealed from convictions in the County Court to the Court of Criminal Appeals and some of those cases will be affirmed. When the mandate is returned Mr. Walters will insist that he is entitled to the fees and commissions under those convictions that are affirmed and we want to know if he is correct about it or will I be entitled to the fee and commission as his successor under the provisions of the Statute? Art. 335, Vern. Ann. St., Vol. 1, p. 527, which was construed in the case of Flint v. Jones County, 50 SW, 203, wherein it is held "The County Attorney who is in office when the collection is actually made is entitled to the commissions named in this article as fees in his office, and not the one who prosecuted the suit to judgment but whose term of office expired before the collection was made." Also under decision in 66 SW, p. 48,

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relying upon this statute and these two constructions thereof. Will I be entitled as the incumbent officer to the fees and commissions collected under these convictions during Mr. Walter's term of office but affirmed and collected under my term of office? Mr. Walters claims that this article and two statutes do not decide this question and that he will be entitled to all fees and commissions collected on these cases.

"We would like at your earliest convenience to have your opinion on these questions."

We do not think that Article 335, Vernon's Annotated Civil Statutes is applicable to the question involving the commissions on fines, etc., but the same is governed by Article 950, Code of Criminal Procedure, which reads as follows:

"The District or County Attorney shall be entitled to ten per cent of all fines, forfeitures, or moneys collected for the State or County, upon judgments recovered by him; and the clerk of the court in which said judgments are rendered shall be entitled to five per cent of said judgments, to be paid out of the amount then collected."

Article 3892, Vernon's Annotated Civil Statutes reads as follows:

"Any officer mentioned in this Chapter who does not collect the maximum amount of his fees for any fiscal year and who reports delinquent fees for that year, shall be entitled to retain, when collected, such part of such delinquent fees as is sufficient to complete the maximum compensation authorized by Articles 3883, 3883-A, and 3886 for the year in which delinquent fees were charged, and also retain the amount of excess fees authorized by law, and the remainder of the delinquent fees for that fiscal year shall be paid as herein provided for when collected; provided the provisions of this Article shall not apply to any officer after one year from the date he ceases to hold the office to

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which any delinquent fee is due, and in the event the officer earning the fees that are delinquent has not collected the same within twelve months after he ceases to hold the office, the amount of fees collected shall be paid into the county treasury. Provided, however, that nothing in this Act precludes the payment of ex-officio fees in accordance with Title 61 of the Revised Civil Statutes of Texas, 1925, as part of the maximum compensation. Provided, that any change made in this Article by this Act shall not apply to fees heretofore earned."

Article 3891, Vernon's Annotated Civil Statutes, reads, in part, as follows:

"\* \* \* All current fees earned and collected by officers named in Article 3883 during any fiscal year in excess of the maximum and excess allowed by this Act, and for their services and for the services of their deputies and assistants and authorized expenses, together with all delinquent fees collected and not used as provided in Article 3892, or used to pay salaries of deputies and assistants when current fees are insufficient, shall be paid into the County Treasury in the county where the excess accrued.

"All fees due and not collected, as shown in the report required by Article 3897, shall be collected by the officer to whose office the fees accrued and shall be disposed of by said officer in accordance with the provisions of this Act. \* \* \*"

It is to be noted that the language used in Article 950, Code of Criminal Procedure, provides that the commissions are payable to the county attorney who recovered the judgment.

On February 24, 1932, this department held in an opinion written by Honorable Homer C. DeWolfe addressed to Honorable Taylor Carlisle, County Attorney, Kaufman, Texas, that the former County Attorney was entitled to the commissions on fines, under facts similar to those stated in your inquiry.

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In view of the foregoing, you are respectfully advised that it is the opinion of this Department that the former County Attorney is entitled to the commissions on the fines and is also entitled to the fees as provided by statute for his services in the cases that he tried and are now on appeal, provided, however, he has not already collected the maximum amount of his fees for the year in which said fees were earned, and, provided further, that said fees were reported by him as delinquent fees for that year, and are collected within twelve months after he goes out of office.

Trusting that the foregoing fully answers your inquiry, we are

APPROVED JAN 30, 1941

*George A. Allen*  
FIRST ASSISTANT  
ATTORNEY GENERAL

AW:ja

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*Ardell Williams*

Ardell Williams  
Assistant

*Per*