



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Homer Garrison, Jr.
Director, Department of Public Safety
Camp Mabry
Austin, Texas

Dear Sir:

Attention: Hon. Hill Foreman, Chief
Texas Highway Patrol

Opinion No. 0-3066
Re: Arrests and arrest fees

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

"We are attaching copy of a report of investigation made by Captain Glen Rose, commanding officer of the Houston Patrol District, which was requested by the Honorable Brady Gentry, Chairman of the State Highway Commission.

"We would appreciate very much your checking into this report and see, if in your opinion, arrest fees are being unlawfully collected in this case."

We have also carefully considered the enclosed report. We do not copy same herein as the same is lengthy. We make the following observations upon said report:

1. The fee of \$4.00 for arrest is excessive. The proper fee for arrest is \$2.00. (See Article 1065, Vernon's Annotated Texas Code of Criminal Procedure.)

2. We enclose herewith copies of opinions Nos. 0-693 and 0-963 which deal with arrest fees, commitment fees

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and release fees, which will guide you in determining whether or not such fees were improperly assessed and collected in such cases. The facts in each particular case, of course, determine the legality or illegality of such fees.

3. The twenty cases for reckless or careless driving were improper because Article 790, Vernon's Annotated Penal Code, (the reckless or careless driving statute) has been held unconstitutional as a penal statute. (See Ladd v. State, 27 S. W. (2d) 1098). Officers should not enforce or attempt to enforce criminal statutes which have been held unconstitutional by the courts.

4. Article 827e, Vernon's Annotated Texas Penal Code, provides a penalty for passing red light traffic signals on State highways outside the limits of incorporated cities and towns. You do not state whether or not Buffalo is an incorporated city or town. If the town or city was not incorporated then such cases would be proper; if incorporated, the city or town ordinances, if any, would control, and the corporation court and not the justice court would have jurisdiction of the offense.

We do not have sufficient information to comment upon other matters stated in the report.

Trusting that this satisfactorily answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Wm. J. Fanning

Wm. J. Fanning
Assistant

WJF:GO

APPROVED MAR 1, 1941

Genesio M. Mann

ATTORNEY GENERAL OF TEXAS

