



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-3121
Re: The Compensation of court
reporters under Article
760, G. C. P.

This department has received your request for an opinion.

We insert the body of your letter as follows:

"I am in receipt of a claim from a court reporter in which he claims fees for preparing the following:

- *STATEMENT OF FACTS of a main trial
- *STATEMENT OF FACTS on hearing of defendant's motion to quash the indictment
- *STATEMENT OF FACTS on hearing of Amicus Curiae motion for change of venue
- *STATEMENT OF FACTS on hearing of Defendant's motion for New Trial.

"I respectfully request that you advise if under Article 760 CCP this claim can be paid for fees other than on the Statement of Facts for the main trial."

Subdivision 6, of Article 760, Code of Criminal Procedure, is the statutory provision applicable to this fact situation. It provides:

"When defendant cannot pay. - When any felony case is appealed and the defendant is

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not able to pay for a transcript of the testimony or give security therefor, he may make affidavit of such fact, and upon the making of such affidavit, the court shall order the official court reporter to make a narrative statement of facts and deliver it to such defendant. In all cases where the court is required to and does appoint an attorney to represent the defendant in a criminal action, such reporter shall be required to furnish the attorney for said defendant, if convicted and where an appeal is prosecuted, with a transcript of his notes. For each said service he shall be paid by the State of Texas, upon the certificate of the trial judge, one-half of the rate provided by law in civil cases."

It will be noted that Subdivision 6, supra, does not, either expressly or impliedly, limit the statement of facts to that adduced in the main trial; to-wit, upon the issue of guilt.

To read such a qualification into the law would defeat the purpose of the statute and defeat the intention of the Legislature, for, obviously, it is designed to provide means and procedure whereby the indigent defendant may effect his appeal from a conviction of a felony.

With this in mind, it is our opinion that all statements of fact necessary and pertinent to the effective prosecution of an appeal should be made available to the convicted defendant. Under the first subdivision of Section 6, Article 760, we believe a defendant is entitled to a narrative statement of facts adduced upon his main trial, on his motion to quash the indictment, on the hearing for change of venue, and on his motion for new trial. Without such statements, he might be deprived of his right to properly present his exceptions to the acts of the trial court thereon to the Court of Criminal Appeals. However, we know of no statutory authority for an "Amicus Curiae motion for a change of venue." In the absence of

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such a statute, we do not believe that a statement of facts in such a proceeding is required to be furnished the defendant at the expense of the State.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Wm. J. Fanning*

Wm. J. Fanning
Assistant

By *Grundy Williams*
Grundy Williams

GW:LM

APPROVED MAR 24, 1941

Gerald Mann
ATTORNEY GENERAL OF TEXAS

