

C O P Y

Honorable E. H. Griffin  
County Attorney  
Young County  
Graham, Texas

Dear Sir:

Opinion No. 0-3180  
Re: Fees of county judge and 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:

"On January 1, 1941, all county and precinct officials in Young County, Texas, were placed by the Commissioners' Court on a fee basis. Prior theretof, they had been compensated on a salary basis. The following question has arisen with reference to the County Judge's trial fee as prescribed by Article 1052, as amended, C. C. P., and as to the \$10.00 fee due the County Attorney under Article 1061, C. C. P., and the \$5.00 fee due the County Attorney by virtue of Article 1068, C. C. P., in the following fact situation:

"A case is filed in the County Court of Young County, Texas, December 15, 1940. The defendant is arrested, makes bond, and on January 15, 1941, comes in the County Court and enters a plea of guilty. Under those facts, is the present County Judge entitled to a \$3.00 trial fee under Article 1052, C. C. P.; and is the present County Attorney entitled to a fee of \$10.00 under the provisions of Article 1061, C. C. P.?"

The population of Young County, Texas, according to the 1940 Federal Census is less than 20,000 inhabitants.

We assume from your letter that a judgment was rendered upon the plea of guilty, was not appealed from and became a final judgment.

Article 1052, Vernon's Annotated Texas Code of Criminal Procedure, reads as follows:

"Three Dollars shall be paid by the county to the County Judge, or Judge of the Court at Law, and Two Dollars and fifty cents shall be paid by the county to the Justice of the Peace, for each criminal action tried and finally disposed of before him. Provided, however, that in all counties having a population of 20,000 or less, the Justice of the Peace shall receive a trial fee of Three Dollars. Such Judge or Justice shall present to the Commissioners' Court of his county at a regular term thereof, a written account specifying each criminal action in which he claims such fee, certified by such Judge or Justice to be correct, and filed with the County Clerk. The Commissioners' Court shall approve such account for such amount as they find to be correct, and order a draft to be issued upon the County Treasurer in favor of such Judge or Justice for the amount so approved. Provided the Commissioners' Court shall not pay any account or trial fees in any case tried and in which an acquittal is had unless the State of Texas was represented in the trial of said cause by the County Attorney, or his assistant, Criminal District Attorney or his assistant, and the certificate of said Attorney is attached to said account certifying to the fact that said cause was tried, and the State of Texas was represented, and that in his judgment there was sufficient evidence in said cause to demand a trial of same."

Article 1061, Vernon's Annotated Texas Code of Criminal Procedure, reads as follows:

"District and county attorneys shall be allowed the following fees in cases tried in the district or county courts, or a county

court at law, to be taxed against the defendant:

"For every conviction under the laws against gaming when no appeal is taken, or when, on appeal, the judgment is affirmed, fifteen dollars.

"For every other conviction in cases of misdemeanor, where no appeal is taken, or when on appeal the judgment is affirmed, ten dollars."

It is our opinion that under the facts stated and upon the assumption that the judgment was final the present county attorney would be entitled to a fee of \$10.00 and the present county judge would be entitled to a fee of \$3.00.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/ Wm. J. Fanning  
Assistant

WJF:GO

APPROVED FEB 21, 1941

s/ Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED: OPINION COMMITTEE

By BWB Chairman