



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable H. D. Stringer
County Attorney
Hall County
Memphis, Texas

Dear Sir:

Opinion No. 0-3527

Re: Is the district clerk entitled to collect one-half of her fees from Hall County when a defendant is indicted under Art. 802, P.C., and upon trial is given a fine and jail sentence and lays the fine and costs out in jail?

Your recent request for an opinion of this department on the above stated question has been received.

Your letters of March 17, and March 22, read, in part, as follows:

"The question has been presented to me whether I, as county attorney, and the justice of peace, peace officers, and district clerk, are entitled to fees as against the county, for a prosecution under Art. 802, P. C., where the defendant is given a fine and jail sentence.

"Article 1020, C. C. P. provides for certain fees to certain officials for holding examining trials, to be paid by the State. However, Art. 1019, C. C. P. provides the State shall pay no fees when the defendant is given a fine, jail sentence, or both. I therefore take it that the State would not be liable for examining trial fees where the defendant is only given a fine and jail sentence.

"However, Art. 1055, C. C. P. provides that

Honorable H. D. Stringer, Page 2

in a misdemeanor case the county shall be liable for one half fees where the defendant lays his fine out in jail or is put on the public works.

"I am in a quandary as to whether the county attorney, justice of peace and peace officers are entitled to one-half fees against the county under a case where the defendant is indicted under Art. 802, P. C. and is only given a fine and jail sentence, and lays the fine and costs out in jail. Also as to whether the district clerk is entitled to one-half fees against the county in such a case.

"I have and thank you for your letter of the 19th enclosing copies of your Opinions 0-3057 and 0-2877,

"As I understand these opinions the constable and justice of peace are entitled to one-half their fees under Art. 1055, C. C. P. I can see no distinction between these officers and the county attorney, and am therefore of the opinion that the latter officer would be entitled to one-half of his examining trial fee under Art. 1055, C. C. P., and the factual situation presented.

"I enclose herewith copy of my tentative opinion to the District Clerk, and would appreciate your views as to whether I am correct."

What was said in our opinion Nos. 0-2877 and 0-3057, relative to the constable and justice of the peace is equally applicable to the district clerk under the facts stated. Therefore, it is our opinion that the district clerk is entitled to one-half of her fees as provided by Article 1055, Code of Criminal Procedure, for services rendered in the above mentioned case.

With reference to the constable and justice of the peace, in your letter of March 22, 1941, you state: "I can see no distinction between these officers and the county attorney, and am therefore of the opinion that the latter officer would be entitled to one-half of his examining trial fee under Art. 1055, C. C. P., and the factual situation presented." In

Honorable H. D. Stringer, Page 3

this connection we call your attention to Article 1027, Code of Criminal Procedure, which provides:

"In all cases where a defendant is indicted for a felony but under the indictment he may be convicted of a misdemeanor or a felony, and the punishment which may be assessed is a fine, jail sentence or both such fine and imprisonment in jail, the State shall pay no fees to any officer, except where the defendant is indicted for the offense of murder, until the case has been finally disposed of in the trial court. Provided the provisions of this Article shall not be construed as affecting in any way the provisions of Article 1019, Code of Criminal Procedure, as amended by Chapter 205, General Laws, Regular Session, Forty-second Legislature; Provided this shall not apply to examining trial fees to County Attorneys and/or Criminal District Attorneys."

In view of the foregoing statute, you are respectfully advised, that it is the opinion of this department that the county attorney would not be entitled to one-half of his fees under Article 1055, Code of Criminal Procedure, under the facts above states, but would be entitled to his examining trial fees as provided by Article 1020, Code of Criminal Procedure, and would be paid by the State.

Trusting that the foregoing fully answers your inquiry,
we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

Ardell Williams

By

Ardell Williams
Assistant

APPROVED MAY 16 1941

Robert C. Kasper

AW:RS

acting

ATTORNEY GENERAL OF TEXAS

