



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Ben Davis Geeslin
County Attorney
Mason County
Mason, Texas

Dear Sir:

Opinion No. 0-3451
Re: Collection of fine
and costs in Justice
Court.

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

"Will you give me your opinion on the following problem:

"Upon a misdemeanor charge two men are placed in jail at night. The next morning they plead guilty and are released. The total fines and costs to be paid by both amount to \$28.00. They bring in \$18.00 which is of course \$10.00 less than the amount of the fine. Now the Justice of the Peace accepts the \$18.00 as payment in full of their fines saying that the remainder of the fines have been taken care of by the fact that they have stayed in jail two days.

"The problem which confronts me is one of the fees that are due. The Justice of the Peace says that I should get \$2.50 out of each person (to be paid out of the \$18.00) from him and \$2.50 for each person from the Commissioners Court which would give me a total of \$5.00 per each person which I understand is the fee which I would be entitled to in case the full fine and costs were paid.

"I don't want to be in the position of rebating any of my fee to the defendants but I also do not want to be in the position of turning a bill into the Commissioners Court for something

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to which I am not entitled. Will you please write me and let me know just what course should be followed. If the above explanation is not full enough please let me know and I will attempt to explain further."

Article 1055, Vernon's Annotated Code of Criminal Procedure, reads as follows:

"The county shall not be liable to the officer and witness having costs in a misdemeanor case where defendant pays his fine and costs. The county shall be liable for one-half of the fees of the officers of the Court, when the defendant fails to pay his fine and lays his fine out in the county jail or discharges the same by means of working such fine out on the county roads or on any county project. And to pay such half costs, the County Clerk shall issue his warrant on the County Treasurer in favor of such officer to be paid out of the Road and Bridge Fund or other funds not otherwise appropriated."

Article 920, Vernon's Annotated Code of Criminal Procedure, applicable to Justice Courts, reads as follows:

"A defendant placed in jail on account of failure to pay the fine and costs can be discharged on habeas corpus by showing:

"1. That he is too poor to pay the fine and costs, and

"2. That he has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of three dollars for each day.

"But the defendant shall, in no case under this article, be discharged until he has been imprisoned at least ten days; and a justice of the peace may discharge the defendant upon his showing the same cause, by application to such justice; and when such application is granted, the justice shall note the same on his docket."

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Under the facts stated in your letter the jail service of the defendants was prior to their conviction and not after their conviction. It is our opinion that no credit could legally be allowed for jail service prior to conviction.

It is our further opinion that the Justice had no authority to give the defendants credit for said jail service and that the defendants still owe the balance of their fine and costs, and same is now collectible as in other cases.

It is our further opinion that the county is not now liable for any costs in the case to any officer under the facts stated.

For your information we are enclosing herewith copies of opinions Nos. O-1048 and O-1792 of this department which deal with collection of fines and costs in Justice Courts.

Very truly yours

APPROVED APR 28, 1941

Wm. J. Fanning

FIRST ASSISTANT
ATTORNEY GENERAL

ATTORNEY GENERAL OF TEXAS

By

Wm. J. Fanning

Wm. J. Fanning
Assistant

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