



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

Honorable A. J. Lockett
County Attorney
Comal County
New Braunfels, Texas

Dear Sir:

Opinion No. 0-3671
Re: Sheriff who conveys temporarily
committed patient to State
Hospital is entitled to receive
actual expenses of transporta-
tion from county.

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

"A question has arisen in this county over the amount of fees to be allowed the sheriff for conveying a temporarily confined patient to the state hospital.

Art. 3193c-3, Texas Civil Statutes, provides that the county shall provide transportation to and from state hospital for such person temporarily committed, but the county shall be reimbursed if the patient or relatives are financially able to pay such expenses.

Art. 3194, Texas Civil Statutes, provides that the expense of conveying all patients to the asylum shall be borne by the counties from which they are sent; and the counties shall pay same on sworn account of such officer performing such service, showing in detail the actual expenses incurred in the transportation, and again providing for reimbursement.

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"Art. 3195, Texas Civil Statutes, provides that an officer who may convey the patient to the asylum in accordance with the provisions of the preceding article shall be paid out of the funds of the asylum at the rate of 10¢ per mile each for himself and guard and patient going, and 10¢ per mile each for himself and guard returning.

"You will note there is an obvious conflict as to whether the county or the asylum shall bear the transportation expense. There is also a conflict as to whether the officer shall receive actual expenses occurred in the transportation or be paid 10¢ per mile each for himself and guard and patient going, and 10¢ per mile each for himself and guard returning.

"The questions we would like to have answered are:

"1. Is the officer to be paid by the county or by the asylum?

"2. Shall the officer be paid actual expenses incurred only, or shall he be paid at the rate of 10¢ per mile each for himself and guard and patient going, and 10¢ per mile each for himself and guard returning?

"I have been unable to find any decisions by Texas Courts construing these statutes. We have a specific case pending before the Probate Court at this time, and would appreciate a ruling from your department at your earliest convenience."

Article 3193a-1, Vernon's Annotated Texas Civil Statutes, deals with the temporary commitment of mentally ill persons to state hospitals for observation and/or treatment for a period not to exceed 90 days. The statute was enacted in 1937 by the 45th Legislature of Texas. Section 3 of the act declares:

"Sec. 3. The county shall provide transportation to and from the State hospital for such person temporarily committed to such hospital by the County Court, but the county shall be reimbursed for such expenses if the patient or relatives are financially able to pay such expenses. The county committing such person to a State hospital, acting through its

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County Court, shall provide all transportation expenses of returning the patient from the State hospital to the committing county within five (5) days after the hospital superintendent shall have mailed a notice by registered mail to the committing County Judge that the patient is to be released, discharged, or furloughed. Said hospital charges for the maintenance and treatment of such patient shall be paid by such patient or such patient's relatives, if they are financially able to pay, in such amounts and at such times as may be required by the State Board of Control in accordance with the laws now in force or hereinafter enacted relating to such charges of persons committed to State hospitals by jury trial. The committing county shall be liable to the State for the board and treatment of the person for all the time he remains in the State hospital after the expiration of the five-day period after notice shall have been mailed to the County Judge of said county as hereinbefore provided. The County judge shall furnish to the State Board of Control a financial and property statement or certificate concerning the property of said person, or the property of such person's relative who may be liable for such person's support."

Opinion No. O-3284 of this Department holds, among other things, that if a sheriff transports a temporarily committed person to the state hospital under Article 31930-1, Vernon's Annotated Civil Statutes, and under proper order of the court, the sheriff would be entitled to receive from the county his actual expenses incurred in the transportation of such person to the state hospital. We enclose herewith a copy of said opinion for your information.

This Department has repeatedly held that a sheriff is entitled to receive only actual expenses incurred in conveying a convicted lunatic to the asylum as authorized by Article 3194, V. A. C. S. See the following opinions:

1. Opinion dated March 19, 1929, written by R. D. Cox, Jr., Assistant Attorney General,
2. Opinion dated June 7, 1927, written by Hon. H. Grady Chandler, Assistant Attorney General,
3. Opinion dated January 30, 1933, written by Hon. Homer C. DeWolfe, Assistant Attorney General,

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4. Opinion dated January 15, 1936, written by Hon. Joe J. Alsop, Assistant Attorney General.

The apparent conflict between Articles 3194 and 3195, V. A. C. S. is explained in the opinion of this Department dated January 30, 1933, written by Hon. Homer C. DeWolfe, referred to above. We quote from said opinion as follows:

"As to the apparent conflict between Article 3194 and 3195, it is only necessary to quote you three articles from Vernon's Sayles' Texas Civil Statutes of 1914, which articles read:

"Art. 147. The expense of conveying to their homes public patients discharged from the asylum, and the necessary clothing furnished to them at the time of their discharge, shall be paid by the State."

"Art. 148. If any person confined in the asylum shall escape therefrom, it shall be the duty of any sheriff or peace officer to apprehend and detain him and to report the same to the County Judge of the County, and also to the superintendent of the asylum, and upon the order of either, to convey such patient back to the asylum."

"Art. 149. Any officer who may convey a patient to the asylum, in accordance with the provisions of the preceding article, shall be paid for such services out of the funds of the asylum, at the rate of ten cents per mile for himself and each necessary guard he may employ, going and returning, and the same for the patient going, the distance to be determined by the superintendent, according to the most direct traveled route."

"It will be noted from a reading of the above articles that the plain legislative intent as to the mileage to be paid out of the funds of the asylum was to include only escaped lunatics returned to the asylum by the sheriff.

"The codifiers combined Article 147 and Article 149 into article 3195, R.C.S. 1925, and designated

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Article 148 as Article 3196. Therefore, the reference in Article 3195 to the provisions of 'the preceding article' refers to what is now Article 3196."

You are, therefore, respectfully advised that it is the opinion of this Department that your questions should be answered as follows:

1. The officer should be paid by the county.
2. The officer should be paid only actual expenses incurred in such transportation.

APPROVED JUN 18, 1941

Very truly yours

George Allen
FIRST ASSISTANT
ATTORNEY GENERAL

ATTORNEY GENERAL OF TEXAS

By

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