



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable R. A. Barton
County Attorney
Calhoun County
Port Lavaca, Texas

Dear Sir:

Opinion No. 9-3769
Re: Disposition of fees in county
court criminal cases -- Article
1055, V.A.C.C.P.

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

"I respectfully present to you for your
consideration and opinion the following pro-
positions:

"FACTS:

"A defendant in the County Court of
Calhoun County, Texas, upon a charge of
Aggravated Assault and battery, by complaint
and information entered a plea of guilty and
was fined the sum of \$25.00 and cost, of a
total of \$72.50. The defendant discharged the
judgment as follows: 30 days in jail at labor
for which he was credited \$60.00. The balance
was paid in cash, to wit: Sum of \$12.50.

"CALHOUN COUNTY OFFICERS:

"County Judge operates upon a salary and fee basis;
Sheriff operates upon a salary and fee basis
County Clerk operates upon a salary and fee basis
County Attorney operates upon a salary and fee basis
Constable operates upon a salary and fee basis.

"In the above cause the Sheriff made the
return upon the warrant. The Constable served
all witnesses.

"QUESTIONS

"I

"Proper ratio and disposition of the sum of \$12.50.

"II

"AMOUNT due officers of the Court under Art. 1055, C.C.P.

"Quotation from your opinion O-755 addressed to Tom A. Craven, County Auditor, McLennan County: Date May 8th. 1939.

"(Where a conviction is had in the Justice Court and only a part of the costs are collected, the sum collected should be prorated between the officers and the county in the same proportion as to which each would have been entitled to receive therefrom had all costs been collected, Art. 949, C.C.P. However since the justice of the peace is paid by the County, his trial fees should not be considered in the proration. Arts 1052, 1054 C.C.P.)

"You followed the same procedure in your opinion O-469, dated April 3rd. 1939.

"In another Justice Court opinion, you state that there shall be no discrimination between the officers of the Court, but that the disposition shall be in equal proportion.

"Article 793 and succeeding articles of C.C.P. provide for the execution of judgement in a misdemeanor case, and judge that the disposition of the sum of \$12.50 would follow along the line of your opinions as rendered for a justice court. Please advise:

"Question No. II.

"Art. 1055 C.C.P. provides in art as follows: '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.

"EXAMPLE:

"Art. 1061 C.C.P. provides that the County Attorney shall receive for convictions of a misdemeanor nature the sum of \$10.00.

"First: In the event the defendant had paid his fine in cash, the County Attorney would have received the sum of \$10.00 for his fee;

"Second: In the event the defendant had served out and discharged his fine in jail at labor on the County Road, the County Attorney would have received from Calhoun County, the sum of \$5.00 as his fee, under Art. 1055.

"Third: In the case at bar, the prorated fee of the County Attorney on the \$12.50 would only be a fractional part of the \$5.00 as provided for under No. Two above noted.

"Would the County Attorney be entitled to receive from the County the difference between the prorated part of the \$12.50 and The \$5.00 provided under Art. No. 1055.

"Likewise would the same rule apply to the other offices of the court."

The population of Calhoun County, Texas according to the 1940 Federal census is 5,911 inhabitants. We further advise from your letter that the County and precinct officers of Calhoun County, Texas, are operating under the fee system, and that any salaries paid to them are ex-officio salaries, allowed in the amount and manner as the law provides. Our answers hereto are based upon the above assumption.

Article 1055, V.A.C.C.P., reads as follows:

"The County shall be liable to each officer and witness having costs in a misdemeanor case for only one-half thereof where the defendant has satis-

fied the fine and costs adjudged against him in full by labor in the workhouse, on the county farm, on the public roads or upon any public works of the county; and to pay such half of such legal costs as may have been so taxed, not including commissions, the county judge shall issue his warrant upon the county treasurer in favor of the proper party, and the same shall be paid out of the road and bridge fund or other funds not otherwise appropriated.

Your letter discloses that the fine in this cause was \$25.00, the cost \$47.50; that the defendant paid \$12.50 in cash and laid out \$60.00 time in jail; the county attorney's fee was \$10.00; the trial fee in county court is \$5.00 under Article 1074, V.A.C.C.P., is taxable as costs and belongs to the county. You do not state the exact amounts of fees due to the clerk, sheriff and constable but the amount due them jointly would be \$32.50.

Opinion Nos. O-469 and O-755 of this department hold that where only a part of the fine and costs are collected, that the money collected should go first to the payment of the costs and the balance, if any, to the amount of the fine and that where there is not enough collected to pay all of the costs, the money collected should be prorated, and that in such case one officer had no priority over another. Said opinions further hold that the trial fee belonging to the county should be considered in the proration. We quote from Opinion No. O-755 as follows:

"In view of the trial fee above provided, being a part of the costs, and by reason that the Justice of the Peace being paid by the county, it is our opinion that the \$8.50 in question should be prorated on the basis of \$5.00 to the county attorney; \$5.50 to the constable and \$4.00 to the county, which figures approximately sixty four and a fraction cents on the dollar. The county would get its pro rata part of the payment."

We enclose herewith copies of said Opinions for your information.

Opinion No-O-1578 of this department, approved in Limited Conference, holds that a constable operating under

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the fee system is entitled under Article 1055, V.A.C.C.P., to half costs from the county on that part of the time a defendant remains in jail or works for the county when he so discharges part of his fine and pays off a part of same. We enclose herewith a copy of said opinion for your information.

We quote from Opinion No. C-1792 of this department as follows:

"In answer to your fifth question, it is the opinion of this department that where only a part of the fine and costs are collected, that the money collected should go first to the payment of the costs and the balance, if any, to the amount of the fine, and that where there is not enough collected to pay all the costs, the money collected should be prorated between the arresting officer, the county attorney and the county. That no officer has priority over another in such matter. For example, if the fine and costs amount to \$25.00; as in your case; the fee of the county attorney amounts to \$5.00; the fee of the constable amounts to \$13.00 and the trial fee amounts to \$4.00; if the defendant paid \$6.00 in cash and the balance is worked out on the county farm the arresting officer would be entitled to \$3.85 of the cash payment, the county attorney would be entitled to \$1.36 of the cash payment and the county (as its portion of the trial fee) would be entitled to \$1.09 of the cash payment. The arresting officer and county attorney would also be entitled to receive payment from the county under Article 1055, V.A.C.C.P., one half of the balance of their fees for the time the defendant worked out the balance of his fine and costs. Under the example quoted above the arresting officer would be entitled to receive from the county the sum of \$1.82. The total sum received by the arresting officer from both sources would be \$3.16."

We enclose herewith a copy of said Opinion for your information.

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In answer to your first question you are respectively advised that it is the opinion of this department that the \$12.50 cash payment in question should be prorated on the basis of \$10.00 to the county attorney; \$5.00 to the county for its trial fee and \$32.50 to the clerk, sheriff and constable jointly (to be divided by them in their proper pro rata shares), which figures approximately 26 3/10 cents on the dollar. Under the facts stated in your letter the county attorney would be entitled to \$2.63 of the cash payment; the county should receive \$1.31 of the cash payment as its portion of the trial fee and the clerk, sheriff and constable should receive the sum of \$8.56 of said cash payment, (to be divided by them according to their respective pro rata shares).

In answer to your second question you are respectfully advised that it is the opinion of this department that under the facts stated the county would be liable under Article 1055, V.A.C.C.P. to the officers as follows:

To the county attorney the sum of \$2.63.

To the clerk, sheriff and constable (to be divided by them according to their respective pro rata shares) the sum of \$11.98.

Under the facts stated the county attorney should receive the total sum of \$6.31 (\$2.63 of the cash payment plus the sum of \$3.68 from the county) and the clerk, sheriff and constable should receive the total sum of \$20.56 (\$8.56 of the cash payment plus the sum of \$11.98 from the county) (to be divided by them according to their respective pro rata shares).

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED JULY 25, 1941
BY GROVER BELLERS
FIRST ASSISTANT
ATTORNEY GENERAL

BY / WM. J. FANNING
ASSISTANT

WJF:EMW

APPROVED OF INQUIRY COMMITTEE B. J. B. CHAIRMAN