



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. O-4377  
Re: Sheriffs - Article 1040,  
V. A. C. C. P. - Feeding pri-  
soners - Purchase of groceries  
and dishes - Employment of  
cook-maid

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

"I wish to submit to your department the following questions for an opinion.

"The Sheriff of Young County, Texas, lives in the County Jail. He is paid by the County 45¢ per day for the support and maintenance of each prisoner. The meals eaten by the prisoners and also by the members of the Sheriff's family are prepared in a common kitchen and from a common supply of groceries. At times it is necessary to employ a maid to assist in the preparation of these meals and the serving thereof and to also assist in household work in the Sheriff's living quarters, as well as, in that portion of the jail occupied by the prisoners.

"Young County officers are compensated on a fee basis.

"In the Sheriff's annual report, the cost of groceries is claimed as an expense of office and

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the amount of money he has paid the maid for her work is also claimed as an expense of office.

"An item of \$30.00 is shown on the Sheriff's annual report and claimed by him as an expense of office for the purchase of dishes used in this common kitchen.

"The employment of the maid and purchase of the dishes was done by the Sheriff without the knowledge or consent of the Commissioners' Court of Young County, Texas, and was not shown or claimed on any monthly statement of expense.

"Please inform me as to what portion of the grocery bill should be allowed as an expense of office.

"Please inform me as to whether or not the cost of maid service should be allowed as an expense of office and if such is allowed, what portion, if any, should be so allowed.

"Please inform me as to whether or not the purchase of dishes should be allowed as an expense of office, and if so, what portion."

Article 1040, Vernon's Annotated Texas Code of Criminal Procedure, reads in part as follows:

"For the safe keeping, support and maintenance of prisoners confined in jail or under guard, the sheriff shall be allowed the following charges:

". . .

"2. For support and maintenance, for each prisoner for each day such an amount as may be fixed by the commissioners court, provided the same shall be reasonably sufficient for such purpose, and in no event shall it be less than forty cents per day nor more than seventy-five cents per day for each prisoner. The net profits shall constitute fees of office and shall be accounted for by the sheriff in his annual report as other fees now provided by law. The sheriff shall in

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such report furnish an itemized verified account of all expenditures made by him for feeding and maintenance of prisoners, accompanying such report with receipts and vouchers in support of such items of expenditure, and the difference between such expenditures and the amount allowed by the commissioners court shall be deemed to constitute the net profits for which said officer shall account as fees of office. . . ."

The above quoted section of the statute provides, among other things, that the net profits (of the feeding and support of prisoners by the sheriff) shall constitute fees of office and shall be accounted for by the sheriff in his annual report as other fees now provided by law. The section also provides "that the sheriff in such report (referring undoubtedly to his annual report referred to above) (brackets ours) furnish an itemized verified account of all expenditures etc." The above quoted section deals specifically with the sheriff's "fees of office" and "expenditures" in the feeding and maintenance of prisoners.

Under Article 3899, V. A. C. S., the expenses, other than those expenditures in connection with automobiles, which an officer is authorized to claim as deductions when properly reported in the required monthly report, are limited to stationery, stamps, telephone, premiums on officials' bonds, including the cost of surety bonds of deputies, premium on fire, burglary, theft, robbery insurance protecting public funds, traveling expenses, and other similar necessary expenses, the rule of construction "ejusdem generis" being applied to qualify the general language by the specially enumerated items and to restrict its meaning to expenses of the same kind or class. See State v. Carnes, 106 S. W. (2d) 397, and Casey v. State, 289 S. W. 428.

Article 1046, Vernon's Annotated Texas Code of Criminal Procedure, reads as follows:

"At each regular term of the commissioners court, the sheriff shall present to such court his account verified by his affidavit for the expense incurred by him since the last account presented for the safe-keeping and maintenance of prisoners, including guards employed, if any.

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Such account shall state the name of each prisoner, each item of expense incurred on account of such prisoner, the date of each item, the name of each guard employed, the length of time employed and the purpose of such employment."

Article 1047, Vernon's Annotated Texas Code of Criminal Procedure, reads as follows:

"The commissioners court shall examine such account and allow the same, or so much thereof as is reasonable and in accordance with law, and shall order a draft issued to the sheriff upon the county treasurer for the amount so allowed. Such account shall be filed and kept in the office of such court."

The case of Harris County, et al v. Hammond, 203 S. W. 451, construed Article 1148 of the Texas Code of Criminal Procedure of 1911, now Article 1046, Vernon's Annotated Texas Code of Criminal Procedure, and said case holds that a sheriff's accounts for keeping prisoners, giving the name of each person, the date and hour committed, the offense, when and how released, the number of days in jail, and arriving at the amount of the bill by multiplying the number of days by the per diem allowance per prisoner, was not required to be more fully itemized, under Article 1148, Code of Criminal Procedure of 1911, requiring accounts presented to Commissioners' Court for keeping prisoners to state the name of each prisoner and each item of expense incurred on account of each prisoner.

We quote from opinion No. 0-2680 of this department as follows:

"In answer to your second question you are respectfully advised that it is the opinion of this department that the law does not require the Sheriff in a fee county to file a monthly report of expenditures for feeding prisoners; that Article 3899, supra, is inapplicable to such situation; that Section 2 of Article 1040, C. C. P., supra, governs said situation and under said section it is the duty of the Sheriff to account in his annual report (required by Article 3897, supra) for the net profits arising from the feeding and maintenance of prisoners, as a fee of office, also furnishing in said annual report an

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itemized verified account of all expenditures made by him for feeding and maintenance of prisoners, etc. The difference between such expenditures and the amount allowed by the Commissioners Court within the limitation set out in the section constitutes the net profits for which the Sheriff shall account for as a fee of office in his annual report. However, under Article 1046, Vernon's Annotated Texas Code of Criminal Procedure, it is the duty of the sheriff to file his verified account for keeping prisoners with the Commissioners' Court at each regular meeting of said court as outlined by said article. The itemization of said account will be sufficient if it meets the requirements laid down in the case of Harris County, et al vs. Hammond, supra."

We quote from opinion No. 0-3394 of this department as follows:

"You state in your letter that 'the sheriff and his family (consisting of four people) eat their meals that are prepared from the same supplies used in feeding the prisoners.' You then propound, for our answer, the following question: 'Shall the meals, the groceries, consumed by the sheriff and his family, also be accounted for as profits and fees of office, as the cash profit from the jail is?'

"As we understand the facts from your letter, the sheriff buys all the groceries together, for the prisoners and also for his family, and the meals for each are then prepared from these groceries. In order that the sheriff may properly account for the profits derived from the feeding of the prisoners where the groceries are so bought, only those groceries actually used in feeding the prisoners should be charged against the allowance made by the commissioners' court in determining the net profits to be accounted for in the sheriff's report. If this is done, 'the profits from feeding the prisoners are properly accounted for by him,' as stated in the

last line of the next to the last paragraph of your letter. If this is done, your question should be answered in the negative.

"In view of your question and from the language of your letter as a whole, however, we presume that the total cost of the groceries, including those consumed by the sheriff's family is charged as an item of expense against the allowance made by the commissioners' court and the difference or 'profits' reported. If this is the case, the amount reported by the sheriff would not reflect the correct amount of profits required to be reported by the sheriff under Article 1040 of the Code of Criminal Procedure. The amount reported would be less the amount used to pay for that part of the groceries consumed by the sheriff and his family. This would be tantamount to the retention and failure to report by the sheriff a part of his fees in violation of the statute. Under these facts, therefore, your question should be answered in the affirmative.

". . .

"In view of the foregoing authorities, you are respectfully advised that it is the opinion of this department that, under the facts stated, the sheriff should either deduct only the cost of the groceries actually used in feeding the prisoners from the allowance made for the feeding and maintenance of the prisoners and report the difference as fees of office, or, he should deduct the total costs of the groceries from the allowance made by the commissioners' court and report the difference plus the cost of the groceries consumed by the sheriff's family as fees of office.

"What we have said above is based upon the presumption that the officers of Midland County are compensated on a fee basis.

"In view of the statement made in your letter that 'Most of the time the sheriff employs

a cook whose salary is charged to expense of office', we wish to point out that such expenditure does not constitute an expense of office and should not be charged as such. The expense of employing a cook to prepare food for the prisoners should be charged against the allowance made by the commissioners' court for the feeding and maintenance of the prisoners in the same manner as the cost of the groceries are charged against said allowance in determining whether the sheriff has made a net profit to be reported as fees of office under Article 1040, Code of Criminal Procedure. See State v. Carnes, et al (Civ. App.) 106 S. W. (2d) 397, at page 400."

This department held on March 4, 1938, in an opinion written by Hon. James N. Neff, Assistant Attorney General, that the sheriff should buy the food used in feeding prisoners confined in the county jail; that it was the duty of the Commissioners' Court to furnish the county jailer with mattresses and blankets and that such mattresses and blankets should be bought on competitive bids as provided by Article 1659, Revised Civil Statutes of Texas.

Opinion No. 0-329 of this department holds that the sheriff and not the Commissioners' Court should supervise the purchase of food and the feeding of prisoners.

We quote from opinion No. 0-1228 of this department as follows:

"With reference to your first question you are respectfully advised that it is the opinion of this department that in your county the sheriff has authority to feed and purchase food necessary for the maintenance of prisoners in the county jail. You are further respectfully advised that it is the opinion of this department that in your county the commissioners' court would have authority to purchase or authorize the purchase of other supplies necessary for the maintenance of prisoners, under the provisions of Article 1659, Revised Civil Statutes of Texas."

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We enclose herewith copies of opinions Nos. O-3394, O-2680 and O-1228 of this department for your information.

You are respectfully advised that it is the opinion of this department:

1. The cost of the groceries consumed by the sheriff and his family should not be charged against the allowance made by the Commissioners' Court for the feeding and maintenance of the prisoners. The sheriff should pay personally for his own groceries and should not charge up the groceries he and his family consume as an expense against the allowance made him by the Commissioners' Court. For example, if the sheriff bought a bill of groceries amounting to \$50.00 and served \$40.00 worth of same to his prisoners and the sheriff and his family consumed \$10.00 worth of the groceries, the sheriff then should report only \$40.00 of same as an item of expense chargeable against the allowance made him by the Commissioners' Court for the purpose of determining what profit, if any, was made. Any profit made would be reported as a fee of office as outlined in Article 1040, V.A.C.C.P.

2. The sheriff has authority to employ a cook-maid to cook food for and serve food to the prisoners and to do household work necessary for the maintenance of the prisoners; the salary paid to such cook-maid for such services should be deducted as an expense against the sheriff's allowance for the purpose of determining what profit, if any, was made. However, the salary paid to such cook-maid for cooking for the sheriff and his family and for performing household work for the sheriff and his family should not be charged up as an item of expense against the allowance.

3. It is not necessary for the sheriff to make a monthly report on the groceries and cookmaid expense as same should be reported in his annual report. (See opinion No. O-2680, supra.)

4. We find your question with reference to the purchase of the dishes rather difficult in view of the meager facts given us with reference to same. However, under the facts stated the \$30.00 worth of dishes bought by the sheriff was bought on his own responsibility and are his dishes and do not belong to the county. We are not furnished with information as to whether the county had necessary and adequate

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dishes on hand at the county jail. Ordinarily, the Commissioners' Court will furnish their jails with necessary stoves, kitchen equipment, utensils, knives, forks, spoons, dishes and other similar things necessary for the feeding of prisoners. The feeding of prisoners, of course, requires a certain amount of dishes. If the county had no dishes in its jail or did not have enough dishes to adequately feed the prisoners in a reasonable manner and the sheriff used his dishes in discharging his duty in feeding prisoners, we think he would be entitled to charge up as an expense against his allowance for the purpose of determining profit, if any, and fees of office, if any, under Article 1040, V.A.C.C.P., a reasonable charge for the use of his dishes, in feeding the prisoners (not including his personal use of the dishes), including wear, breakage and depreciation. The reasonableness of such charge would be determined by the Commissioners' Court in its sound discretion.

Very truly yours

ATTORNEY GENERAL OF TEXAS

*Wm. J. Fanning*

By

Wm. J. Fanning  
Assistant

APPROVED FEB 10 1948

*Edwin W. Clegg*

EDWIN W. CLEGG  
ATTORNEY GENERAL

7:00

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