



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
~~WALTER B. BURNETT~~
ATTORNEY GENERAL

This Opinion
Modifies Opinion
0-1981

~~Honorable~~ Dewey S. Walker
County Attorney
Walker County
Huntsville, Texas

Dear Sir:

Attention: Robert B. Smither

Opinion No. 0-4680

Re: Under the facts submitted is the sheriff of Walker County entitled to collect his fees for the transportation of defendant, under Article 567-b, Section 5, Vernon's Annotated Penal Code, from the State or if the defendant should be required to remain in the county jail until he has satisfied such costs?

Your letter of June 20, 1942, requesting the opinion of this department on the above stated question reads as follows:

"In Re: State vs. William B. Palmer,
County Court, Walker County,
Texas

"In the above case the defendant has pleaded guilty to the offense of passing a hot check in the amount of \$10.00 and his punishment assessed at one day in jail and costs of Court. The defendant was located at New Braunfels, Texas; and held there for the sheriff of Walker County, Texas, who went after the defendant and transported him to his county.

"The question is whether the sheriff of Walker County is entitled to collect his fees for the transportation of the defendant under Article 567-b, Section 5 from the State or if the defendant should be required to remain in the County Jail until he has satisfied such costs?

"We are unable to find any cases where this question has been construed by the Courts.

"It appears the only method by which the sheriff could collect his fees from the State would be by the district court approving an account for the same as provided in Article 1030 of the Code of Criminal Procedure, however, in view of Article 1019 of the Code of Criminal Procedure it appears likely the district court would not be authorized to approve the sheriff's account and the defendant would be required to remain in the county jail until all costs were satisfied.

"Ex parte Shaffer, 92 S. W. 2d 250; Overstreet vs. State, 15 S. W. 2d 1039."

In opinion No. 0-1981, this department held, among other things, that:

" . . . Officers issuing and serving process in misdemeanor cases arising under Article 567b of the Penal Code are entitled to such fees as they would be in any other misdemeanor case

". . . .

"Where a defendant is convicted of a misdemeanor offense under the above mentioned article and is unable to pay his fine and costs and satisfies the same working on public works or remaining in jail as provided by Articles 785-797, inclusive, of the Code of Criminal Procedure, the officers or witnesses would be entitled to collect from the county one-half fees as in other misdemeanor cases as provided by Article 1055, of the Code of Criminal Procedure. Bearing in mind that officers issuing and serving process are only entitled to the same fees and mileage as in other misdemeanor cases. "We enclose a copy of this opinion herewith.

With reference to opinion No. 1981, Supra, it will be noted that it is stated in part; "the officers or witnesses would be entitled to collect from the county one-half fees", etc. The word "witnesses" was inadvertently inserted. Witnesses are not entitled to any fees under Art. 1055 C. C. P. Therefore, opinion No. 1981, is modified accordingly.

Article 235, Vernon's Annotated Code of Criminal Procedure, provides:

"One arrested for a misdemeanor shall be taken before a magistrate of the county where the arrest takes place who shall take bail and transmit immediately the bond so taken to the court having jurisdiction of the offense."

You do not state in your letter whether or not the provisions of Article 235, supra, were complied with. However, for the purposes of this opinion we assume that the provisions of this statute were complied with, and that the defendant did not enter into and execute a bail bond and the defendant was committed to jail of the county where he was arrested under Article 236, Vernon's Annotated Code of Criminal Procedure, and the magistrate committing him notified the sheriff of Walker County in which the offense was alleged to have been committed of the arrest and commitment, and the sheriff receiving the notice went for the defendant and brought him before the proper court as authorized by Article 237, Vernon's Annotated Code of Criminal Procedure.

In view of the foregoing, you are respectfully advised that it is the opinion of this department that the sheriff of Walker County is not entitled to collect his fees for the transportation of the defendant from the State and that the defendant should be required to remain in the county jail until he has satisfied such costs at the rate of \$3.00 per day. (Ex parte Ferguson, 123 S. W. (2d) 408 and Ex parte Patterson, 132 S. W. (2d) 411.) And as the county officials of Walker County are compensated on a fee basis the sheriff would be entitled to collect from the county one-half his mileage and other fees as in other misdemeanor cases as provided by Article 1055, Code of Criminal Procedure.

Trusting that the foregoing fully answers your inquiry, we are.

Yours very truly

ATTORNEY GENERAL OF TEXAS

s/ Ardell Williams
Assistant

AW:GO/Ldw

APPROVED JUL 8, 1942
s/ GERALD C. MANN
ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY B. W. B.
CHAIRMAN