



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable J. D. Looney
County Auditor
Bowie County
Boston, Texas

Dear Sir:

Opinion No. O-5168
Re: Should the 5% commission col-
lected by the Justices of the
Peace of Bowie County for fine
and trial fees be reported as
excess fees for the year 1942?

We acknowledge receipt of your letter of February
12, 1943, requesting the opinion of this department on the
above stated question. Your letter is as follows:

"Several of the Justice of the Peace of this
County, will have excess fees that they earned
for the year 1942. Please advise whether or not
they should report in with other fees the 5% Com-
mission for collecting Fine & Trial fees?"

"The J P's and Constable work under the fee
system in this County."

Article 951, Vernon's Annotated Code of Criminal
Procedure provides:

"The sheriff or other officer, except a justice
of the peace or his clerk, who collects money for
the State or county, except jury fees, under any
provision of this Code, shall be entitled to retain
five per cent thereof when collected."

This department has repeatedly ruled that a Justice
of the Peace is not entitled to retain five percent commis-
sion on fines collected. We respectfully refer you to the
following opinions of this department with reference to same;
to wit:

Opinion written by Honorable James N. Neff, Assist-
ant Attorney General, addressed to W. E. Yancey, County

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Auditor, Tarrant County, Fort Worth, Texas, dated December 1, 1937, and an opinion written by Honorable Joe J. Alsop, Assistant Attorney General, addressed to Mr. H. A. Courtney, County Auditor, Lufkin, Texas, and dated December 18, 1936.

In opinion No. O-1162, a copy of which is enclosed herewith it was held among other things, in effect, that a Justice of the Peace is not entitled to five percent commission on fines collected by the Justice of the Peace. (Also see the case of McLennan County v. Bogess, 139 S. W. 1054).

In view of the foregoing you are respectfully advised that the Justices of the Peace mentioned in your inquiry have no legal authority whatsoever to retain the five percent commission for collecting fines and trial fees. Therefore, your question as above submitted becomes moot.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Artell Williams*

Artell Williams
Assistant

AW:MP
Encl.

APPROVED
1948

Gerard C. Mann

ATTORNEY GENERAL OF TEXAS



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