



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. C-5180  
Re: Justice of the Peace is not  
entitled to commission for  
collecting fines and trial  
fees and related matters.

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

"I am in receipt of your opinion No. C-5108 in which you hold that a Justice of the Peace does not have the right to retain 5% commission for collecting fine and trial fees.

"It has been the custom in Bowie County for years past for Justices of the Peace to retain this 5% commission, and their right to do so had never been questioned until I received your opinion. Those who are now in office have been retaining this 5% commission, and many former Justices of the Peace who are now in civil life, also retained it while they were in office. All parties concerned have been laboring under the impression that a Justice of the Peace had the legal right to retain this commission inasmuch as the collections are actually made by the Justice of the Peace and he is charged with all the bookkeeping work attendant upon said collecting.

"If Justices of the Peace have had no legal authority to retain these commissions, it follows that, having mistakenly done so, they must owe the amount of the commissions retained to someone. To whom do they owe them?

"In answering this question, please bear in mind that all payments on fine and trial fees have been made directly to the Justices of the Peace, who have issued all receipts and done all the book-keeping incident to said collections.

"PS. If the J P's were ever allowed a commission, please advise on what date it ceased."

Prior to its amendment in 1929, by the 41st Legislature of Texas, Article 951, Texas Code of Criminal Procedure, 1925, read as follows:

"The sheriff or other officer who collects money for the State or county, under any provision of this Code, except jury fees, shall be entitled to retain five per cent thereof when collected. (Acts 1876, p. 287; Acts 1889, p. 95.)"

The case of McLennan County v. Boggess, Tex. Civ. App., 139 S. W. 1054, discussed Article 1144 of the Texas Code of Criminal Procedure of 1895, which read the same as Article 951, C. C. P., 1925, supra. We quote from the court's opinion as follows:

"Notwithstanding the fact that the Supreme Court held on certified question that appellee Boggess, a justice of the peace, was not entitled to the commission allowed by article 1143 of the Code of Criminal Procedure of 1895, to the clerk of the court in which judgments are rendered, which was the defense interposed and relied on by appellees, it is now contended on motion for rehearing, that Boggess was entitled to retain 5 per cent. of the moneys referred to under article 1144 of the Code of Criminal Procedure, which reads: 'The sheriff or other officer who collects money for the state or county under any of the provisions of this Code, except jury fees, shall be entitled to retain five per cent. thereof when collected.' By article 1143 the district or county attorney is allowed 10 per cent. of the moneys referred to; and, if Boggess was not allowed to retain 5 per cent. as clerk of his court, then he should have

paid to the county 85 per cent. of the moneys referred to in the findings of fact. The facts show that he paid to the county only 80 per cent., and paid to the county attorney 10 per cent. and to the constable 5 per cent. and retained another 5 per cent. for himself. It is stated in the motion for new trial that the Attorney General's department has recently held that, when a justice of the peace collects a fine from the party against whom it has been adjudged by a judgment of his court, he is entitled to 5 per cent. thereof under article 1144. That ruling may be entirely correct, but, if so, it furnishes no reason for setting aside the judgment rendered by this court against Bogess and the sureties upon his official bond. If he was entitled to 5 per cent. commission under article 1144, then the constable was not entitled to the 5 per cent. commission which Bogess paid to him. It was not lawful to take more than one commission from the fines for collecting the same, and, adding to that 10 per cent. for the county attorney, left 85 per cent. thereof due the county, while Bogess has only paid to the county 80 per cent."

On June 27, 1911, in an opinion written by Honorable Walter C. Woodward, Assistant Attorney General of Texas, this department held that a justice of the peace would be entitled to retain 5 % of the fine collected by him under Article 1144 of the then existing Texas Code of Criminal Procedure and that such holding was not in conflict with the case of McLennan County v. Bogess, supra. This opinion is recorded in Vol. 25, pages 40 and 41, Opinion Records of the Attorney General of Texas. We enclose herewith a copy of said opinion for your information.

However, Article 951, C. C. P., 1925, supra, was amended by the 41st Legislature of Texas in 1929.

Article 951, Vernon's Annotated Texas Code of Criminal Procedure, as amended by the 41st Legislature of Texas, 1929, and as it now exists, reads as follows:

"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. (Acts 1876, p. 287; Acts 1889, p. 95, as amended Acts 1929, 41st Leg., p. 240, ch. 105, § 1.)" (Underscoring ours)

Ever since the 1929 amendment to Article 951, V. A. C. C. P., supra, this department has repeatedly ruled that a justice of the peace was not entitled to retain 5% of fines and trial fees collected by him. See Opinion Nos. O-1162 and O-5108 of this department, copies of which are enclosed for your information.

Opinion No. O-626 of this department holds that a sheriff is entitled to 5% commission on fines in such instances only as such fines were collected by the sheriff.

Answering your questions it is our opinion:

1. Prior to the 1929 amendment to Article 951, V. A. C. C. P., a justice of the peace was entitled to 5% commission on fines actually collected by him. However, if the constable or sheriff actually collected the fine instead of the justice such officer would be entitled to the 5% commission; in no event would the justice and the arresting officer have been each entitled to a commission. See McLennan County v. Boggess, supra.

2. Since the 1929 amendment to Article 951, V. A. C. C. P., a justice of the peace is not entitled to a commission on fines collected by him. Nor is he entitled to commission on trial fees collected by him.

3. Not being legally entitled to retain commissions on fines collected by him since the 1929 amendment to Article 951, supra, it would follow that the justice who thereafter illegally retained such commissions would lawfully owe same to whom it lawfully belonged, subject, of course, to the right of the justice to invoke the appropriate limitation statute if the claim was barred by limitation. For example, if the justice collected the fine no 5% commission was due; same should not have been retained but should have been turned into the county; in such case the justice would owe the county and the county could recover from the justice of the peace if the claim was not barred by the statute of limitations properly pleaded in defense by the justice.

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Trusting that this satisfactorily answers your inquiry, we are.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

(s) Wm. J. Fanning  
Assistant

WJF:mp  
Encl.  
WJF:fo and pw.

APPROVED APR 9, 1943

(s) Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE

BY (S) BNB, CHAIRMAN