



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Frank X. Vance
County Attorney
Medina County
Hondo, Texas

Dear Sir:

Opinion No. 0-5432

Re: Are constables entitled to
fees in inquest proceedings?

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

"Would a constable be entitled to a fee for assisting a justice of the peace in holding an inquest as provided in Articles 968-189 of Code of Criminal Procedure?"

"The facts of the matter are: the justice of the peace has no car or other means of travel to where a dead body is and he gets the constable to drive him to where the dead body is and assist him in what way he may (the distance may be several miles to where the dead body is).

"The law provides for paying a physician if one is needed and provides for a chemical analysis to determine the cause of death. Also, the law provides that a justice may subpoena witnesses and enforce their attendance and indirectly this would necessitate the presence of a peace officer to serve subpoenas, enforce order, etc. at such hearing.

"The justice of the peace puts in his bill for \$5.00 to the Commissioners' Court and the constable presents his bill also for \$3.00 as his fee. Would the Commissioners' Court be authorized in paying the constable charge?"

Hon. Frank X. Vance, page 2

Articles 1053 and 1054, Vernon's Annotated Texas Code of Criminal Procedure, read as follows:

"Art. 1053. (1156) (1111) Inquest fee

"A justice of the peace shall be entitled, for an inquest on a dead body, including certifying and returning the proceeding to the proper court, the sum of five dollars, to be paid by the county. When an inquest is held over the dead body of a State penitentiary convict, the State shall pay the inquest fees allowed by law of all officers, upon the approval of the account therefor by the commissioners court of the county in which the inquest may be held and the superintendent of penitentiaries. (Acts 1876, p. 291; Acts 1883; p. 39; Acts 1st C. S. 1917, p. 52.)

"Art. 1054. (1157) (1112) Pay for inquest

"Any officer claiming pay for services mentioned in the preceding article shall present to the commissioners court of the county, at a regular term of such court, an account therefor, verified by the affidavit of such claimant. If such account be found correct the court shall order a draft to issue upon the county treasurer in favor of such claimant for the amount due him. Such account shall be filed and kept in the office of the county clerk."

Construing Article 1053, V. A. C. C. P., this department held in an opinion written by Honorable James N. Neff, dated February 15, 1938, recorded in Vol. 380, page 187, Letter Opinions of the Attorney General of Texas, that the justice of the peace was not entitled to any mileage for going to the place of inquest. In other words the \$5.00 fee is for all of his services.

We have carefully examined the statutes and are unable to find any statute authorizing or providing any character of fee or fees for a constable in inquest proceedings. An inquest is neither criminal nor a civil case. It is a special statutory proceeding. No schedule of fees for constables in inquest proceedings is set up by the statutes. Neither the fees allowed constables in criminal cases nor in civil cases are applicable to the special statutory proceeding of an inquest.

Hon. Frank X. Vance, page 3

Article 1011, Vernon's Annotated Texas Code of Criminal Procedure, provides that "no item of cost shall be taxed for purported service which was not performed, or for a service for which no fee is expressly provided by law."

Since no fee is expressly provided by law for constables in inquest proceedings it is our opinion that the constable would not be entitled to any fee whatever and that the commissioners' court of your county is not authorized to pay the bill submitted by the constable or any part thereof.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By (s) Wm. J. Fanning
Assistant

WJF:ME
WJF:FO
APPROVED JUL 2, 1943
(s) Wm. J. Fanning
(Acting) ATTORNEY GENERAL
OF TEXAS

APPROVED OPINION COMMITTEE
BY (S) BWB, CHAIRMAN