



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-7029

Re: Examining trial and district court fees in a felony case where, upon trial, the plea of insanity was invoked and the defendant was adjudged insane.

Your letter of recent date requesting an opinion from this department on the above subject matter is as follows:

"There is some confusion in this department as to the payment of fees in a felony case, both examining trial and District Court fees, where the defendant is charged with felony and upon trial, the plea of insanity is invoked and the defendant is adjudged insane. What effect will the adjudgment of insanity have upon the rights of the county officials, where the case is pending, to collect from the State the fees that would otherwise be payable both in reducible and non-reducible cases? (This situation applies to under-counties on a fee basis).

"A specific case is now presented to this department as follows: A defendant is indicted for murder. Upon trial of the case, a plea of insanity was invoked and defendant was adjudged insane. The charge of murder pending against the insane defendant was subsequently dismissed. Can this department issue warrant in

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payment to the county officials claiming fees under this case, both for examining trial and District Court fees? Would it make any difference whether the felony charge was one of murder or any other felony such as rape? Or would it make any difference whether the case was dismissed or left pending? Would the question of limitation run against the fee accounts in the murder case?

"In connection with the last question, I refer you to Articles 1020, 1027, 1034 and 1035, C. C. P."

This department received in answer to our request for additional information the following letter from Judge Brian Montague, 63rd Judicial District, Del Rio, Texas:

"This will acknowledge the letter addressed to me, under date of January 30, 1946, relative to a request for an opinion concerning the payment of fees in Case #1350 styled The State of Texas versus Terry Randle, lately pending in the District Court of Kimble County, Texas.

"Hon. J. B. Randolph, Judge of the 112th District of Texas, having advised me of his disqualification in the trial of the above cause, I was thereupon designated by the Judge of the Sixth Administrative District to preside in the trial of the above cause, and did do so.

"An indictment was returned in this cause during the month of October, 1945, charging the defendant, Terry Randle, with the offense of murder with malice. On January 3, 1946 I called this case for trial, having previously gone to Junction for the purpose of drawing a special venire for said trial, and, when called, the defendant, through his attorney, filed an affidavit alleging the insanity of the defendant, Terry Randle, at the time of the alleged commission of the offense and 'now', that is, on January 3, 1946.

"In conformity with the provisions of law a jury was thereupon impaneled for the trial of the issues made by said affidavit, and upon the conclusion of the introduction of the testimony the Charge of the Court was submitted to the jury, which consisted of special issues, the first of which requested their answer as

to whether or not the defendant was sane or insane on the date of the alleged commission of the offense, to-wit, September 11, 1945; and the second issue was whether or not the defendant was sane or insane at this time (January 3, 1946). To each issue the answer of the jury was that the defendant was insane. Thereupon the judgment of the Court, which was entered, was one finding the defendant insane at the time of the alleged commission of the offense and at the date of his trial.

"The case was by no means dismissed and, by the same token, it certainly was not left pending, but has been finally adjudicated for, under the decisions of this state, the defendant would never be tried for the criminal offense charged by the indictment. Under the statute alluded to, the only possible proceeding which hereafter can be had in this case would be another trial, assuming the proper predicate is laid at that time, to determine the sanity of the defendant at such time."

Chapter 2 of Title 15, Vernon's Annotated Code of Criminal Procedure, (Articles 1018 through 1036) provides for costs which are paid by the State. Art. 1027, V. A. C. C. F., provides:

"In all cases where a defendant is indicted for a felony but under the indictment he may be convicted of a misdemeanor or felony, and the punishment which may be assessed is a fine, jail sentence or both such fine and imprisonment in jail, the State shall pay no fees or any officer, except where the defendant is indicted for murder, until the case has been finally disposed of in the trial court." (emphasis ours)

Section 3 of Art. 932a, V. A. C. C. F., provides:

"When the defendant so committed to a hospital for the insane becomes sane, the superintendent of the hospital shall give written notice of that fact to the Judge of the Court from which the order of commitment issued. Upon receipt of such notice the Judge shall require the sheriff to bring the defendant from the hospital and place him in the proper custody until the hearing may be had before a jury in such Court to determine defendant's sanity, and if he be found sane, he shall be discharged, unless he had been previously found

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to be sane at the time at which he is alleged to have committed the offense charged, in which event, unless previously acquitted, he shall be tried for the offense charged." (emphasis ours)

We held in Opinion No. O-3691:

** * *After the indictment has been returned, and where insanity is interposed as a defense, the defendant or accused may be tried on that issue alone in the District Court before the main charge. If the jury finds the defendant insane, or to have been insane at the time the act is alleged to have been committed, they shall so state in their verdict, or if the jury finds that the defendant was insane at the time the act is alleged to have been committed but sane at the trial, he shall be immediately discharged. If the jury finds that the defendant was insane at the time the act is alleged to have been committed and insane at the time of the trial, or sane at the time the act is alleged to have been committed and insane at the time of the trial, the court shall thereupon make and have entered on the minutes of the court an order committing the defendant to the custody of the sheriff, to be kept subject to the further order of the county judge of the county, and the proceedings shall forthwith be certified to the county judge who shall at once take the necessary steps to have the defendant committed to and confined in the State Hospital for the insane until he becomes sane. On the other hand, when the defense on the trial of the main charge is the insanity of the defendant the jury shall be instructed, if they acquit him on that ground, to state that fact with their verdict, and if they further find the defendant to have been insane at the time the act is alleged to have been committed, but sane at the time of the trial, he shall be immediately discharged. However, if the jury finds that the defendant was insane at the time the act is alleged to have been committed and insane at the time of trial, or sane at the time the act is alleged to have been committed and insane at the time of the trial, the court shall thereupon make and have entered on the minutes of the court an order committing the defendant to the custody of the sheriff, to be kept subject to further order of the county judge of the county, and the proceedings shall forthwith be certified to the county judge who shall at once take the necessary steps to have the defendant committed to and confined in a State Hospital for the insane until he becomes sane. (Art. 932a, V. A. C. C. P.)"

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Therefore, where the defendant is charged with a felony and, upon trial, the plea of insanity is invoked and the defendant is adjudged insane, it is our opinion that the "case has been finally disposed of in the trial court" within the meaning of Art. 1027, supra.

On the basis of the facts relative to the claim submitted, there was a final adjudication of the instant case. Therefore, it is our opinion that you are authorized to issue warrants in payment of fees in the present claim.

Art. 1035, V. A. C. C. P., provides:

"The Comptroller upon the receipt of such claim, and said certified copy of the minutes of said Court, shall closely and carefully examine the same, and if he deems the same to be correct, he shall draw his warrant on the State Treasurer for the amount found by him to be due, and in favor of the officer entitled to the same. If the appropriation for paying such accounts is exhausted, the Comptroller shall file the same away, if found to be correct, and issue a certificate in the name of the officer entitled to the same, stating herein the amount of the claim and the character of the services performed. All such claims or accounts not sent to or placed on file in the office of the Comptroller within twelve (12) months from the date the same becomes due and payable shall be forever barred." (emphasis ours)

It is our opinion that said statute applies to fees in a murder case as well as other felonies.

We trust that we have satisfactorily answered your inquiry.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

BY

J. C. Davis, Jr.
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Assistant

BY

John Reeves
John Reeves

APPROVED
FIRST DEPT.
ATTORNEY GENERAL
8. 1946

MAIL

APPROVED
OPINION
COMMITTEE
BY *BWB*
CHAIRMAN