



**OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS**

PRICE DANIEL
ATTORNEY GENERAL

April 24, 1947

Hon. R. A. Barton
County Attorney
Calhoun County
Port Lavaca, Texas

Opinion No. V-151

Re: Whether or not the Comptroller of Public Accounts can pay sheriff fees under the facts presented.

Dear Sir:

Your letter requesting an opinion from this Department on the above subject matter is as follows:

"I desire to request an opinion regarding the right of the Calhoun County Sheriff, Mr. Leonard Fisher, to receive payment from the State of Texas for fees due his office growing out of two cases:

"Case No. 1061, a criminal case, wherein execution was had on the 9/26/44. Indictment was returned 11/13/44 and the cause disposed of 11/18/46.

"Case No. 1068, a criminal case wherein execution was had on the 8/5/45, indictment returned 11/21/45, final disposition on the 12/3/46.

"Mr. George Sheppard has by letter attached of January 17th, 1947 denied payment of certain items. The first case was the charge of passing a forged instrument; the second for the sale of mortgaged property. Both cases were disposed of by dismissal on motion of the District Attorney. It is true that neither case was a reducible case as provided by article 1027 V. C. C. P. However in this county and district the District Judge has heretofore refused to approve any fees until the case under indictment was disposed of. For that reason it has been impossible for the sheriff's department to submit to the Comptroller his statement of fees due within a year from the date of

indictment or execution, unless the case was disposed of within that time.

"Under that state of facts it is unjust to deny this claim for fees. I find no cases as to when a fee may become due. Certainly a fee that does not have the District Judge's approval certainly is not due. There is no mandatory requirement upon the judge to approve a fee in such causes until after final disposition.

"Under those facts is the sheriff of Calhoun County not entitled to his fees."

We quote the following from a letter written to the sheriff by Hon. George H. Sheppard, Comptroller:

"I hereby acknowledge receipt of your District Court Account for the November 1945 and November 1946 Terms of Court submitted in the amount of \$161.20.

"In Case No. 1061 I note that the service was performed September 26, 1944, and as the offense was of a non-reducible nature, and the claim should have been presented to this office within twelve months from the end of that Term of Court. In Case No. 1068, the offense was of a non-reducible nature and the claim should have been presented within one year from the end of the April, 1945, Term of Court. Your account will be reduced by \$4.00 and \$110.20 on the above cases. I wish to call to your attention regarding the above cases, Article 1027, V.C.C.P. and Article 1035 V.C.C.P. If any dates or terms of court submitted on the above cases are in error, do not hesitate to notify me.

"I am enclosing Warrants Nos. 333910 for \$33.50 and 333923 for \$13.50 in payment of the above cases."

Article 1035, V. C. C. P., prior to being amended in 1931, 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 correct, draw his warrant on the State Treasurer for the amount 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 correct, and issue a certificate in the name of the officer entitled to the same, stating therein 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 months from the date of the final disposition of the case in which the services were rendered, shall be forever barred." (Underscoring ours)

Article 1035, V. C. C. P., as amended by Acts 1931, 42nd Legislature, p. 239, 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. In 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 here 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." (Underscoring ours)

Article 1027, V. C. C. P., provides:

"In all cases where a defendant is indicted for a felony but under the indictment he may be convicted of a misdemeanor or a 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 to any officer except where the defendant is indicted for the offense of murder, until the case has been finally disposed of in the trial court. . . ."

It will be noted that prior to the 1931 amendment Article 1035 provided that all claims in "non-reducible" cases not sent to or placed on file in the Comptroller's office within twelve (12) months from the date of final disposition of the case, would be forever barred. The 1931 amendment to Article 1035 changed this provision to provide that all claims or accounts in non-reducible cases not sent to or placed on file in the Comptroller's office within twelve months from the date the same became due and payable will be forever barred.

Article 1027 provides that in "reducible" cases (except murder) no fees shall be paid by the State to any officer until the case has been finally disposed of in a trial court. Said provision implied that in all other cases fees would become due and payable prior to the disposition of the case. This implication becomes stronger when construed in the light of the 1931 amendment to Article 1035. The Legislature, by said amendment, changed the date from which limitation would begin to run in "non-reducible" cases to the date the claim became due and payable instead of the date of the final disposition of the case in which the services were rendered. Therefore, the Legislature has now made it mandatory that all claims in "non-reducible" cases not filed with the Comptroller within twelve months from the date the same becomes due and payable shall be forever barred.

There is no indication from your letter that the claims for fees were submitted to the District Judge for his approval prior to the final disposition of the case. If the claims had been submitted to the District Judge and the District Judge had refused to approve same, the sheriff would have had his remedy in court as set out in Binford vs. Robinson, 244 S. W. 807.

Since the claims presented to the Comptroller were based on offenses of a "non-reducible" nature, such claims should have been presented to the Comptroller within twelve months from the date the same became due and payable. The Comptroller has consistently and uniformly construed the language "from the date the same becomes due and payable" in such cases as meaning the close of each term of court after the service by the

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sheriff has been rendered. This construction is based on the provisions of Article 1028, V.C.C.P., which provides:

"All fees accruing under the two succeeding articles shall be due and payable at the close of each term of the district court, after being duly approved, except as provided for in subdivisions 7 and 8 of said articles, which shall be paid when approved by the judge under whose order the writ was issued."

We quote the following from 39 Texas Jurisprudence, pp. 235-237:

"The courts will ordinarily adopt and uphold a construction placed upon a statute by an executive officer or department charged with its administration, if the statute is ambiguous or uncertain, and the construction so given it is reasonable . . . The rule above stated is particularly applicable to an administrative construction of long standing . . . or where a law that has been uniformly construed by those charged with its enforcement has been reenacted without a change of language."

In view of the foregoing, it is our opinion that the claims for fees by the sheriff mentioned in your request are forever barred by virtue of the mandatory provisions of Article 1035, V. C. C. P.

SUMMARY

Fees of a sheriff based upon claims for services rendered in "non-reducible" cases become due and payable at the end of the term of court in which the services were rendered, and all such claims not filed with the Comptroller within

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twelve (12) months from the date the claims become due and payable are forever barred. Articles 1027, 1028 and 1035, V. C. C. P.

Yours very truly,

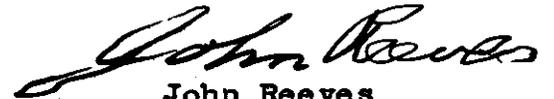
ATTORNEY GENERAL OF TEXAS

By



Bruce Allen
Assistant

By



John Reeves
Assistant

APPROVED APR. 24, 1947



ATTORNEY GENERAL

JR:djm:mrj