



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS
June 23, 1947

PRICE DANIEL
ATTORNEY GENERAL

Hon. Elmer H. Parish
District Attorney
Wichita County
Wichita Falls, Texas

Opinion No. V-260

Re: The authority of a Justice of the Peace to charge the fee allowed by Article 1052, V.C.C.P., when he sits as a "Court of Inquiry" under Article 886, V.C.C.P.

Dear Sir:

In your letter dated June 6, 1947, receipt of which was acknowledged on June 9, 1947, you requested an opinion of this Department on the following:

"May a Justice of the Peace in a county of more than 20,000 population, charge the \$2.50 fee as allowed by Article 1052, C.C.P., when he sits as a magistrate under Article 886, C.C.P., as a court of Inquiry, wherein he adduces sufficient evidence to warrant prosecution, and complaint is made based upon that evidence and docketed as a new case on his docket and then disposed of by the Justice of the Peace?"

"In the case at hand, no individual was under arrest; the Justice of the Peace was conducting a hearing to ascertain if any law had been violated, and, if so, by whom."

Article 1052, V.C.C.P., provides in part:

". . . Two dollars and fifty cents shall be paid by the county to the Justice of the Peace, for each criminal action tried and finally disposed of before him."

Article 886, V.C.C.P., provides:

"When a Justice of the Peace has good cause to believe that an offense

has been, or is about to be, committed against the laws of this state, he may summon and examine any witness in relation thereto. If it appears from the statement of any witness that an offense has been committed, the Justice shall reduce said statements to writing and cause the same to be sworn to by each witness making the same; and issue a warrant for the arrest of the offender, the same as if complaint had been made and filed."

Article 24 of Vernon's Penal Code provides:

"A criminal action means the whole or any part of the procedure which the law provides for bringing offenders to justice; and the terms 'prosecution' and 'accusation' are used in the same sense."

In *Brown v. State*, 118 S. W. 139, the Court, in discussion a "Court of Inquiry" held by a Justice of the Peace, stated:

"He was summoning before himself as Justice of the Peace, witnesses solely for the purpose, and only with the view of ascertaining if any crimes or violations had been committed. . . He had no case before him; he was investigating as Justice of the Peace, with a view and for the purpose of finding, or procuring, or originating a case or cases."

It will be noted that Article 1052, V.C.C.P., provides that the fee shall be paid to the Justice of the Peace "for each criminal action tried and finally disposed of before him." A "Court of Inquiry" as provided for in Article 886, V.C.C.P., is not a proceeding in which a criminal action is tried and finally disposed of but an inquiry to determine whether or not a criminal action should be instituted.

Article 886, V.C.C.P., provides that if it appears to the Justice of the Peace that an offense has been committed he shall "issue a warrant for the arrest of the offender, the same as if a complaint had been made and filed." It is well settled that the complaint is the initial step in a criminal prosecution. 12 Tex. Juris. 382. It therefore appears that Article 886, V.C.C.P., is providing another method of instituting a criminal action. If it appears at the court of inquiry that no offense has been committed and no warrant is issued, then no criminal action is ever commenced. But if the evidence at the inquiry is sufficient to justify the issuance of a warrant and one is in fact issued, a criminal action is at that time commenced and in no wise tried and finally disposed of. If no warrant is issued but a complaint is made based upon the evidence adduced at the court of inquiry and docketed on the docket of the Justice of the Peace, the criminal action is commenced upon the filing of the complaint and a criminal action is not tried and finally disposed of until all the issues of law and fact have been determined, and the final judgment entered.

Fee statutes are strictly construed and unless there is an express authority to pay a fee none may be paid. There is no provision made for paying a fee to a Justice of the Peace for holding a court of inquiry as provided for in Article 886, V.C.C.P. It is a familiar rule with respect to compensation of public officers that they shall receive such salary, fees, or compensation only as may be prescribed by law. If an additional duty is imposed upon an officer for which no fee or compensation is fixed by law, the duty must be performed as an additional burden imposed by law without extra compensation therefor. This rule has been uniformly followed by the courts and by the opinions of this department. (Atty. Gen. Opinion No. V-144) It therefore follows that your question should be answered in the negative.

SUMMARY

Public officers shall only receive such salary, fees, or compensation as may be prescribed by law. A Justice of the Peace may not charge the fee provided for in Article 1052, V.C.C.P., where he sits as a Court of

Hon. Elmer H. Parish - Page 4

Inquiry under the provisions of Article 886,
V.C.C.P., inasmuch as a "Court of Inquiry"
is not a criminal action.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By 
Burnell Waldrep
Assistant

BW:et:djm:WB

APPROVED:


ATTORNEY GENERAL