



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

PRICE DANIEL
ATTORNEY GENERAL

FAGAN DICKSON
FIRST ASSISTANT

June 4, 1948

Hon. Wm. N. Hensley
Criminal District Attorney
San Antonio, Texas

Opinion No. V-597

Re: The payment from County funds of fees of attorneys appointed by the court to represent the defendant in lunacy cases.

Dear Sir:

Reference is made to your recent request which reads, in part, as follows:

"On March 30, 1948, we received a request for an opinion from the County Auditor in regard to payment of attorney's fees by the County in lunacy cases under Article 5550, R.C.S. A copy of this request is enclosed.

"On April 7, 1948, we rendered our opinion No. H-103 thereon, answering said request in the affirmative to the effect that the attorney's fee provided by law could be paid out of County Funds. A copy of this opinion is enclosed.

"The County Auditor now wants us to secure an opinion from you on the same question, not being completely satisfied that we have settled the law thereon.

"We, therefore, respectfully refer his request to you, together with our opinion thereon, and we desire your opinion thereto."

The request of the County Auditor is, in part, as follows:

"On March 29th, the Commissioners' Court passed an order approving the

claim of Lester L. Klein, Attorney at Law, in the amount of \$15.00 and authorized me to draw Voucher Warrant in payment of same.

"This claim of Mr. Klein is for representing defendants in three lunacy cases at \$5.00 per case, he having been appointed by Hon. Chas. J. Matthews, Judge County Court at Law No. 2, acting for Chas. W. Anderson, County Judge Bexar County, Texas. Article 5550, Vernon's Texas Statutes authorizes the County Judge to appoint council in lunacy cases at a fee not to exceed \$5.00 per case to be taxed as cost in the case.

"This statute does not say that this fee shall be paid by the County from County funds. It appears to me that if there is no other Statute authorizing this fee to be paid from County funds that it would be paid if and when the cost were collected in each case.

"Does the Statute permit this fee to be paid from County funds?"

Article 5550, V. C. S., is as follows:

"The cause shall be docketed on the probate docket of the Court in the name of the State of Texas as plaintiff, and the person charged to be insane as defendant. The County Attorney or the District Attorney in counties having no County Attorney, shall appear and represent the State on the hearing, and the defendant shall also be entitled to counsel; and in proper cases the County Judge may appoint counsel for that purpose.

"In cases in which the County Judge may deem it necessary to appoint counsel for the defendant, such appointment shall be noted upon the docket giving the name of the attorney so appointed, and in cases in which the County Judge deems it neces-

sary a fee may be allowed to counsel for the defendant in such sum as may be fixed by the County Judge, and noted on the docket, in an amount not to exceed Five Dollars (\$5.00), to be taxed as costs in the case."

Article 4316, V. C. S., provides that:

"When any person is found to be of unsound mind or to be an habitual drunkard, the cost of the proceeding shall be paid out of his estate; or, if his estate be insufficient to pay the same, such costs shall be paid out of the county treasury, and the judgment of the court shall be accordingly. If the defendant be discharged, the person at whose instance the proceeding was had shall pay the costs of such proceeding; unless the informant be an officer acting in his official capacity in filing the information, in which case the costs shall be paid out of the county treasury."

We assume that a fee of \$5.00 was allowed by the County Judge in each case.

Article 5550 provides that such fee shall be taxed as costs. Article 4316 provides how costs shall be paid in lunacy cases. Since both the foregoing statutes relate to lunacy cases, they must be considered together in regard to the taxing of costs. When this is done, and in view of the plain language of Article 4316, it is our opinion that if in such a trial the person is found to be of unsound mind, such fee should be paid out of his estate. But if his estate be insufficient, then it should be paid out of the county treasury. If the defendant be discharged, then the fee should be paid by the person at whose instance such proceeding was had, unless the informant be an officer acting within his official capacity in filing the complaint, in which case the costs shall be paid out of the county treasury.

SUMMARY

In a lunacy case where the defendant was found to be insane and the County Judge appointed an attorney to repre-

sent defendant and allowed an attorney's fee, the fee should be paid out of defendant's estate as part of the costs of suit. If his estate is insufficient the attorney's fee should be paid out of the County Treasury as part of the costs. If the defendant was discharged, then the fee should be paid by the person at whose instance such proceeding was had, unless the informant be an officer acting within his official capacity in filing the complaint, in which case the costs shall be paid out of the County Treasury. Articles 5550 and 4316, V. C. S.

Yours very truly,

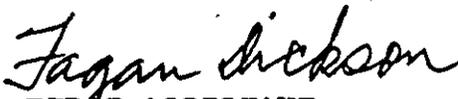
ATTORNEY GENERAL OF TEXAS

By 

Bruce Allen
Assistant

BA:erc:mw

APPROVED:


FIRST ASSISTANT
ATTORNEY GENERAL