



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

July 14, 1948

Hon. Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Opinion No. V-633

Re: Authority of County
Officers to collect
fees in juvenile
cases under the
stated facts.

Dear Sir:

Your request for an opinion is substantially
as follows:

"Is a District Clerk or any other
county officer entitled to his fees under
the provisions of Title 15, Chapter 2, V.
C.C.P. when a defendant is indicted for a
felony offense and later an affidavit is
filed setting up the fact that such defen-
dant is a juvenile and such case was trans-
ferred to the juvenile docket and tried
and disposed of as such?"

Article 2338-1, Section 13, V. C. S., provides,
in part, as follows:

"The Judge may conduct the hearing
in an informal manner and may adjourn the
hearing from time to time. In the hear-
ing of any case the general public may
be excluded. All cases involving chil-
dren shall be heard separately and apart
from the trial of cases against adults.

"If no jury is demanded, the Judge
shall proceed with the hearing. When
the proceeding is with a jury, the ver-
dict shall state whether the juvenile is
a 'delinquent child' within the meaning
of this Act, and if the Judge or jury
finds that the child is delinquent, or
otherwise within the provisions of this
Act, the court may by order duly enter-

ed proceed as follows:

"(1) place the child on probation or under supervision in his own home or in the custody of a relative or other fit person, upon such terms as the court shall determine;

"(2) commit the child to a suitable public institution or agency, or to a suitable private institution or agency authorized to care for children; or to place them in suitable family homes or parental homes for an indeterminate period of time, not extending beyond the time the child shall reach the age of twenty-one (21) years;

"(3) make such further disposition as the court may deem to be for the best interest of the child, except as herein otherwise provided.

"No adjudication upon the status of any child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any child be charged with or convicted of a crime in any court." (Emphasis ours)

Section 21 of the same Article provides that an appeal may be taken by any party aggrieved to the Court of Civil Appeals, and the case may be carried to the Supreme Court by writ of error or upon certificate as in other civil cases.

That a juvenile proceeding is not criminal in nature is clearly evidenced in the holding of the court in the case of Dendy v. Wilson, 142 Tex. 460, 179 S.W. (2d) 269, wherein the court stated:

"This Act does not undertake to convict and punish a child for the commission of a crime . . . The only issue to be de-

terminated at the trial is whether the juvenile is a 'delinquent child' within the meaning of the Act.

" . . . It has been repeatedly held by other courts, in construing acts similar to the one under consideration, that such statutes are not criminal in nature, and where their purpose is for the education and reformation of the minor, and the institution to which he or she is committed is not penal in nature, the denial of the right of a jury trial is not a violation of the Constitution.

"If the objects of the Act are to be accomplished, the proceedings thereunder must necessarily be civil in nature, and while in some respects the orders or the judgment of the court may have the characteristics of a judgment in a criminal case, the customary rules of evidence in civil cases, developed through long experience as essential in arriving at the truth with reasonable certainty, must be followed."

Generally speaking, the statutes prescribing fees for public officers are strictly construed and a right to fees may not rest in implication. *Binford v. Robinson*, 244 S.W. 807; *McCalla v. City of Rockdale*, 246 S.W. 654; and 34 Tex. Jur. 508. The compensation of public officers is fixed by the Constitution or statutes. An officer may not claim or receive any money without a law authorizing him to do so and clearly fixing the amount to which he is entitled. 34 Tex. Jur. 511.

Article 2338-1 creates in each county of this State a Juvenile Court, a court of record, with exclusive jurisdiction, powers, and duties in proceedings governing any delinquent child. The pertinent part of Section 12 thereof reads:

"If during the pendency of a criminal charge or indictment against any person in any other court than a Juvenile Court, it shall be ascertained that that said person is a female over the age of ten (10) years and under the age of seventeen (17) years at the time of the trial for the alleged of-

fense, it shall be the duty of such court to transfer such case immediately together with all papers, documents and testimony connected therewith to the Juvenile Court of said county."

Your question is predicated upon a case where the accused was indicted for a felony and was transferred by the district court to a juvenile court when it had ascertained the accused was at the time of trial, over ten years of age and under the maximum age stated in Section 12.

Article 2338-1 repealed Articles 1083-1093, V.C.C.P., and Articles 2329 and 2338, V. C. S., which were the governing articles pertaining to delinquent children. Article 1084, prior to its repeal, contained very similar provisions to those contained in Section 12 for the transfer of cases from another court to the juvenile docket. This office has consistently held for many years that when a case was transferred by the district court to a juvenile docket in accordance with the provisions of Article 1084 that claims of a district clerk, sheriff, or county officer for services rendered in connection therewith could not legally be paid by the State. The Comptroller has consistently followed the opinions of the Attorney General. Opinion No. 0-1468, cited by you is an example thereof.

Under the statutes heretofore cited, which were repealed by Article 2338-1, no girl under 18 years of age or boy under 17 years of age could be convicted of any felony except perjury. *Williams v. State*, 225 S.W. 173. The same is true under the provisions of Article 2338-1. *Santillian v. State*, 182 S.W.(2d) 812. In a perjury case, the district court has jurisdiction and retains it. Such a case does not come within the purview of Article 2338-1.

After a very careful consideration of all the provisions of Article 2338-1 and the statutes providing for fees to be paid by the State in felony cases to district clerks, sheriffs, and other county officers, we have concluded your question should be answered in the negative.

While a proceeding of this nature frequently inflicts hardships upon officers, nevertheless the duty of supplying such compensation rests with the Legisla-

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ture. It necessarily follows that if the statute prescribes duties to be performed and provides no compensation for the performance of the duty, the officer cannot collect a fee for the performance of said duty.

SUMMARY

When a person has been indicted for a felony offense and the district court finds that such person, at the time of trial, is a female over the age of ten years and under the age of eighteen years, or is a male over the age of ten years and under the age of seventeen years, and transfers the case to a Juvenile Court, the district clerk, sheriff, or other county officer may not be paid by the State for services rendered in connection with such case. Art. 2338-1, V. C. S.; Opinion No. O-1468.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By 
Burnell Waldrep
Assistant

BW:mw

APPROVED:


FIRST ASSISTANT
ATTORNEY GENERAL