



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

December 18, 1963

Honorable Edna Cisneros
County Attorney
Willacy County
Raymondville, Texas

Opinion No. C-195

Re: Questions regarding
the assessment and
collection of fees
in felony cases.

Dear Miss Cisneros:

You have requested the opinion of this office as to certain questions regarding the assessment and collection of fees by prosecuting attorneys and district clerks in felony cases. Willacy County has a population of 20,081, and cast over 3,000 votes at the preceding presidential election.

- "1. What fee is allowed the prosecuting attorney in a non-reducible felony case other than a felonious homicide and is it to be taxed as court costs even though the State of Texas does not pay such fee to said attorney?"

Several statutes are pertinent to this and succeeding questions, and will be quoted in part:

Article 1018, Vernon's Code of Criminal Procedure:

"When the defendant is convicted, the costs and fees paid by the State under this title shall be a charge against him, except when sentenced to death or to imprisonment for life, and when collected shall be paid into the State Treasury."

Article 1019, Vernon's Code of Criminal Procedure:

"If the defendant is indicted for a felony and upon conviction his punishment is by fine or confinement in the county jail, or by both such fine and confinement in the county jail, or convicted of a misdemeanor, no costs shall be paid by the State to any officer. All costs in such

cases shall be taxed, assessed and collected as in misdemeanor cases."

Article 1025, Vernon's Code of Criminal Procedure:

"In each county where there have been cast at the preceding presidential election 3000 votes or over, the district or county attorney shall receive the following fees:

"For all convictions of felony when the defendant does not appeal, or dies or escapes after appeal and before final judgment of the appellate court, or when the judgment is affirmed on appeal, twenty-four dollars for each felony other than felonious homicide, and forty dollars for each such homicide.

". . ."

Article 1061, Vernon's Code of Criminal Procedure:

"District and county attorneys shall be allowed the following fees in cases tried in the district or county courts, or a county court at law, to be taxed against the defendant:

"For every conviction under the laws against gaming when no appeal is taken, or when, on appeal, the judgment is affirmed, Fifteen Dollars (\$15.00);

"For every other conviction in cases of misdemeanor, where no appeal is taken, or when, on appeal the judgment is affirmed, Fifteen Dollars (\$15.00)."

With reference to the first question asked, Article 1025, Vernon's Code of Criminal Procedure, patently requires that the prosecuting attorney receive a fee of \$24.00 where there has been a conviction for a felony other than felonious homicide. It is noted that the county officials of Willacy County are on a salary basis, and that Article 3912e, Vernon's Civil Statutes, prohibits the payment by the State or county

of any fees to such officers; rather, all fees or commissions which the county officer is entitled to collect are still to be assessed, but paid into the Officers' Salary Fund of the individual county. Thus, while the prosecuting attorney may not himself receive the fee provided for in Article 1025, such costs should be taxed as costs of court, and, if recovered, paid into the Officers' Salary Fund.

"2. What fee is allowed the prosecuting attorney in a felony case where the punishment assessed is a fine or jail sentence or both?"

Article 1019, quoted above, provides that the costs in this type of situation are to be determined as in misdemeanor cases. Article 1061, Vernon's Code of Criminal Procedure, requires that, in cases of misdemeanor conviction, the prosecuting attorney is to be allowed a fee of \$15.00, and such fee is to be assessed and collected as outlined in the answer to Question No. 1, above. Further, Article 950, Vernon's Code of Criminal Procedure, authorizes the collection of 10% of all fines collected.

"3. What fee is allowed the prosecuting attorney in a reducible felony case where the defendant is not punished by confinement in the county jail or assessed a fine, but punished by confinement in the penitentiary?"

The defendant here has been convicted of a felony, and thus the answer to this question is the same as the answer to Question No. 1.

"4. What fees are allowed a District Clerk in felony cases in Willacy County, or stated another way, what fees should the District Clerk enter in the fee book on felony cases?"

The District Clerk should enter the fees provided for in Article 1026, Vernon's Code of Criminal Procedure. It should be noted that, since the State no longer pays any fees, the \$8.00 fee provided for in this statute can only be assessed upon a conviction for felony. Thus no entry should be made in the District Clerk's fee book until after conviction.

"5. Whether the payment of court costs in felony cases where a defendant is granted probation can be included as one of the terms and conditions of such probation?"

In the cases of Ex Parte Sethers, 151 Tex.Crim. 553, 209 S.W.2d 358 (1948), and Ex Parte Morgan, 159 Tex. Crim. 241, 262 S.W.2d 728 (1953), it was held that the payment of court costs was a necessary prerequisite to discharge from custody under probation. However, in neither of these cases were the payment of court costs made a condition of probation. In view of the fact that Section 6 of Article 781d, Vernon's Code of Criminal Procedure, the Adult Probation and Parole Law of 1957, gives to the court jurisdiction to impose a wide range of conditions in granting probation, it is the opinion of this office that the payment of court costs may be included as one of the conditions imposed. If the payment of proper court costs is not made a condition of the probation order, of course the court costs are due and payable at the time the probation order is entered. Article 781d, Sec. 11, Vernon's Code of Criminal Procedure.

SUMMARY

If a defendant is convicted of a felony other than homicide, in a county where more than 3,000 votes were cast in the preceding presidential election, the prosecuting attorney is allowed, by Article 1025, Vernon's Code of Criminal Procedure, a fee of \$24.00. This fee is to be taxed as court costs, and, when collected, is to be paid into the Officers' Salary Fund.

If a defendant is charged with a felony but the punishment assessed is a fine or jail sentence or both, Article 1061, Vernon's Code of Criminal Procedure, requires a fee of \$15.00, and Article 950, Vernon's Code of Criminal Procedure, requires the collection of 10% of the amount of the fine, both of which are to be taxed and collected as above.

The District Clerk of Willacy County should enter in the fee book the fees provided for in Article 1026, Vernon's Code of Criminal Procedure, in cases of felony conviction. Such fee entry should not be made

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until conviction is had.

In cases where probation is granted, the payment of court costs can be included as one of the terms and conditions of such probation.

Yours very truly,

WAGGONER CARR
Attorney General

By *Malcolm L. Quick*
Malcolm L. Quick
Assistant

MLQ:ms

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman
V. F. Taylor
Allo Crow
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APPROVED FOR THE ATTORNEY GENERAL
By: H. Grady Chandler