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January 23, 1936

Mr. Charles R. Martin  
County Auditor  
Harrison County  
Marshall, Texas

Dear Sir:

Opinion No. 0-57

Re: Is a sheriff, paid on salary  
basis, required to issue official  
receipts provided for in  
Art. 1010a, C. C. P.?

Your letter of January 6th, requesting an opinion as to whether a sheriff on a salary basis should be required to comply with the Acts of 1935, 44th Legislature, ch. 188, p. 470, and provide official receipts when collecting fines and fees in criminal cases, has been referred to the writer for reply.

As pointed out by you, the statute requiring official receipts to be issued by "fee officers", was passed and became effective prior to the enactment of the officer's salary law. At the time of the passage of chapter 188, supra, sheriffs were paid compensation entirely from fees. They now generally receive, and since January 1, 1936 have received, compensation in the form of salaries.

In the Missouri case of State v. Riedel, 46 S. W. (2d) 131 at p. 133, appears a discussion of the term "fees" which seems pertinent to the matter before us. Said the court:

"The word 'fees', if used in its narrow distinctive sense, signifies the compensation for particular acts or services rendered by county officers in the line of their duties, to be paid by the individuals obtaining the benefit of the acts, or receiving the services, or at whose instance

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they were performed. But a glance at the statutes in force at the time (Wagner's Statutes 1872), will show that in the main only state officers then received salaries within the strict meaning of that term. Practically all county officers (with whom alone the constitutional provision was dealing) were compensated by fees, but, when a limit was placed on the amount of fees an officer might retain, that maximum was regarded as his salary, and therefore, in a generic sense, the word 'fees' implied compensation or salary, since it was the source of these.....it was held the word 'fees' in its more comprehensive signification meant compensation.....and there is authority for that view from other jurisdictions....."

In addition to the foregoing there is another reason why the provisions of the Official Receipt bill should continue applicable to sheriffs. Section 5 of the Officers Salary bill (art. 3912e, sec. 5) provides "it shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official service performed by them." As the Official Receipt bill was the law at the time this language was employed by the legislature, it seems clear all officers collecting fines and fees in criminal cases should continue to comply with art. 1010a, C. C. P., as it now stands.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Assistant

BW:AW

APPROVED:

ATTORNEY GENERAL OF TEXAS