



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

January 26, 1939

Hon. Will Crow  
County Attorney  
Canadian, Texas

Dear Mr. Crow:

Opinion No. 0-166  
Re: Costs of court in Criminal  
Proceeding in County Court

Your request for an opinion of the following questions:

"Whether costs in County Court may be collected before appeal is perfected?"

"Whether a paupers oath affects costs already accrued in County Court, as well as the costs of appeal?"

"Whether County Clerk can make defendants pay costs of copying Bill of Exceptions and Transcripts before same are delivered to the defendants?"

has been received by this office.

Article 828, C. C. P., reads in part as follows:

"The effect of an appeal is to suspend and arrest all further proceeding in the case in the court in which the conviction was had until the judgment of the appellate court is received by the court from which the appeal was taken."

Article 1014, C. C. P., provides:

"When a criminal action or proceeding is taken by appeal from one court to another, or whenever the same is in any other way transferred from one court to another, it shall be accompanied by a complete bill of all costs that have accrued therein,

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certified to and signed by the proper officer of the court from which the same is forwarded."

Article 760, sec. 6, C. C. P., provides:

"6. When defendant cannot pay. --When any felony case is appealed and the defendant is not able to pay for a transcript of the testimony or give security therefor, he may make affidavit of such fact, and upon the making of such affidavit, the court shall order the official court reporter to make a narrative statement of facts and deliver it to such defendant. In all cases where the court is required to and does appoint an attorney to represent the defendant in a criminal action, such reporter shall be required to furnish the attorney for said defendant, if convicted and where an appeal is prosecuted, with a transcript of his notes. For each said service he shall be paid by the State of Texas, upon the certificate of the trial judge, one-half of the rate provided by law in civil cases."

Article 785-797, C. C. P., inclusive, provides in detail the manner of execution of judgment in misdemeanor cases.

In view of the foregoing statutes, you are respectfully advised that it is the opinion of this Department that the costs of county court cannot be collected until judgment of the appellate court is received by the court from which the appeal was taken and that the pauper's oath, as provided by Article 760, sec. 6, C. C. P., has no application in misdemeanor cases, and you are further advised that the county clerk can demand and compel defendants to pay costs of bill of exceptions and transcripts before the same are delivered to the defendants.

Trusting that the foregoing answers your inquiry,  
I remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By (Signed)  
Ardell Williams  
Assistant

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APPROVED:

Gerald C. Mann (Signed)  
ATTORNEY GENERAL OF TEXAS