



THE ATTORNEY GENERAL
OF TEXAS

GERALD C. MANN

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Mr. Joe Gordon
County Attorney
Gray County
Pampa, Texas

Opinion No. 0-259
Re: Fees of county clerk - Officer's
Salary Fund.

Your request for an opinion upon the following
question:

"In county operating on a salary basis is
county clerk entitled to fees on lunacy cases
and for recording county instruments, such fees
to be remitted to Officer's Salary Fund?"

has been received by this Department.

Section 3 of Article 3912e provides as follows:

"In all cases where the Commissioners'
Court shall have determined that county of-
ficers or precinct officers in such county
shall be compensated for their services by the
payment of an annual salary, neither the State
of Texas nor any county shall be charged with
or pay to any of the officers so compensated,
any fee or commission for the performance of any
or all of the duties of their offices but such
officers shall receive said salary in lieu of
all other fees, commissions or compensation
which they would otherwise be authorized to re-
tain; provided, however, that the assessor and
collector of taxes shall continue to collect and
retain for the benefit of the Officers' Salary
Fund or funds hereinafter provided for all fees
and commissions which he is authorized under
law to collect; and it shall be his duty to
account for and to pay all such monies received
by him into the fund created and provided for
under the provisions of this Act; provided
further, that the provisions of this Section
shall not affect the payment of costs in civil

cases by the State but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act to account for fees, commissions and costs collected from private parties."

Section 5 of Article 3912 e reads as follows:

"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 and when such fees are collected they shall be deposited in the Officers' Salary Fund, or funds provided in this Act. In event the Commissioners' Court finds that the failure to collect any fee or commission was due to neglect on the part of the officer charged with the responsibility of collecting same, the amount of such fee or commission shall be deducted from the salary of such officer. Before any such deduction is made, the Commissioners' Court shall furnish such officer with an itemized statement of the uncollected fees with which his account is to be charged, and shall notify such officer of the time and place for a hearing on same, to determine whether such officer was guilty of negligence, which time for hearing shall be at least ten days subsequent to the date of notice. Unless an officer is charged by law with the responsibility of collecting fees, the Commissioners' Court shall not in any event make any deductions from the authorized salary of such officer.

Article 5561, Revised Civil Statutes of Texas, reads as follows:

"Officers and jury fees. In such cases the officers shall be allowed the same fees as are now allowed for similar services performed in misdemeanor cases and the jurors shall each be allowed a fee of One (\$1.00) Dollar, to be paid out of the estate of the defendant, if he have an estate, otherwise by the county on accounts approved by the county judge." (This article appears in the chapter relating to lunacy proceedings and is the costs allowed officers and jurors in lunacy proceedings.)

Lunacy proceedings are of a civil, and are not of a criminal nature - insanity is not a crime; in contradistinction it is a disease - White vs. White, 196 SW 508 (Sup. Ct. of Tex.).

A lunacy proceeding is a civil, and not quasi criminal, proceeding. Ex Parte Singleton, Court of Criminal Appeals, 161 SW 123.

You are respectfully advised that if the defendant in lunacy have no estate then the county clerk should charge the county a fee for services under Article 5561, Revised Civil Statutes of Texas, as the same is a civil case, and that he should be paid by the county for such services out of the General Fund of the county, and that when such clerk receives such payment out of the General Fund it is the duty of the clerk to place such payment he receives from the General Fund into the Officers' Salary Fund of the county.

It is the further opinion of this Department that the only compensation that the clerk is entitled to retain if the salary allowed him under the Officers' Salary Law. However, it is still his duty to charge and collect and account for all fees and commissions which are permitted by law to be assessed and collected for all official services performed by him and, as and when such fees are collected, the clerk must deposit the same in the Officers' Salary Fund or funds provided in the Salary Act.

On May 2, 1931, this Department held, in an opinion written by Hon. R. G. Waters, Assistant Attorney General, that the county clerk is not entitled to a recording fee to be paid by the county for recording deeds and the county instruments pertaining to land purchased by the county and that services rendered by the county clerk for recording county instruments would be considered "public services" and his remuneration would be taken care of in his ex-officio salary, if any, paid by the county.

On August 19, 1935, this Department held, in an opinion rendered by Hon. Leon O. Moses, Assistant Attorney General, that the county clerk was not entitled to a fee for recording right-of-way deeds for the county.

You are further advised that it is the opinion of this Department that the county clerk is not entitled to charge the county recording fees for recording right-of-way deeds for the county because there is no authority which authorizes the county clerk to charge the county for such services.