



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

May 1, 1939

Mr. R. E. Beasley
County Auditor
McKinney, Texas

Dear Sir:

Collin Co

Opinion No. 0-635

Re: What are the proper charges to be allowed to the constable for mileage under the facts set forth?

Your request for an opinion on the above-stated question has been received by this office.

Your letter reads in part as follows:

"At the present time the Collin County Jail here in McKinney is being renovated. We are using the Hunt County jail at Greenville to keep our prisoners. The Constable of Precinct No. 2 lives in Farmersville which is about equal distance between McKinney and Greenville. He has arrested a negro on a chicken theft case, carried him to Greenville, put him in jail, left him over night, went back the next morning and got him and brought him to McKinney and filed a charge of chicken theft against him. In reporting his mileage he claims the mileage from Farmersville to Greenville and from Greenville back to McKinney.

"Please advise us as to whether this is the proper procedure for him to follow in this case or whether he should have brought the prisoner directly to McKinney and turned him over to the sheriff and let the sheriff then carry him to Greenville and in that case just claim mileage from Farmersville to McKinney. This is a question that has arisen a

few times already and probably will arise more times before our jail is completed and we can move into it."

Article 1029, Code of Criminal Procedure, reads in part as follows:

"In each county where there has been cast at the preceding Presidential election three thousand (3000) votes or more, the sheriff and constable shall receive the following fees:

"Section 4. For removing or conveying prisoners, for each mile going and coming, including guards and all other necessary expenses, when traveling by railroad, ten cents (10¢). When traveling otherwise than by railroad, fourteen cents (14¢); provided that where more than one prisoner is so conveyed or removed at the same time, in addition to the foregoing, he shall be allowed eight cents (8¢) per mile for each additional prisoner."

We are informed by the Comptroller's office that Collin County cast at the preceding Presidential election over three thousand (3000) votes. Therefore, Article 1029, supra, would be applicable to Collin County.

Article 1031, Code of Criminal Procedure, reads as follows:

"When services have been rendered, by any peace officer other than the sheriff, such as are enumerated in the two preceding articles, such officer shall receive the same fees therefor as are allowed the sheriff. The same shall be taxed in the sheriff's bill of costs, and noted therein as costs due such peace officer; and when received by such sheriff, he shall pay the same to such peace officer."

Articles 217 and 233, Code of Criminal Procedure read as follows:

"Article 217. In each case enumerated in this chapter, the person making the arrest shall immediately take the per-

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son arrested before the magistrate who may have ordered the arrest, or before the nearest magistrate where the arrest was made without an order.

"Article 233 The officer, or person executing a warrant of arrest, shall take the person whom he is directed to arrest forthwith before the magistrate who issued the warrant, or before the magistrate named in the warrant."

You are respectfully advised that it is the opinion of this department that when an arrest is made in the county where the offense is committed the accused must be taken before a magistrate, as required by Articles 217 or 233 of the Code of Criminal Procedure, and that the officer is entitled to be compensated for removing or conveying prisoners, for each mile going and coming, including guards and all other necessary expense, when traveling by railroad, ten cents (10¢). When traveling otherwise than by railroad, fourteen (14¢); and where more than one prisoner is so conveyed or removed at the same time, in addition to the foregoing he shall be allowed eight cents (8¢) per mile for each additional prisoner.

Trusting that the foregoing answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

Ardell Williams

By

Ardell Williams
Assistant

AW-MR

APPROVED:

Gerald C. Mann
ATTORNEY GENERAL OF TEXAS