



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable R. P. Power
Assistant County Attorney
Tyler, Texas

Dear Mr. Power

Opinion No. 0-935

Re: (a) Fees of Justice of the Peace sitting as an examining court, where the accused is not tried and does not waive his examining trial.
(b) Fees of sheriff or constable in such cases.

We have your letter of June 10, 1939, in which you desire to know what fees, if any, may be collected by a Justice of the Peace or Constable (operating under the fee system) in a case where the defendant is charged with a felony before a Justice of the Peace, sitting as a magistrate, but no examining trial was held, and the accused did not waive his right to such trial.

This Department has for a number of years held that in such cases the Justice of the Peace was not entitled to collect any fee. We are herewith enclosing copy of a letter opinion dated September 9, 1932, addressed to Honorable George H. Sheppard, Comptroller of Public Accounts, and signed by an assistant attorney general. We approve that opinion.

You state that a warrant of arrest was issued for the accused, but you do not state whether it was ever delivered to the Constable for execution, or, if delivered, whether it was ever executed. We assume that no arrest was made, therefore, the accused was never brought before the Justice of the Peace to answer the accusation made against him. This assumption is based on your statement "that there is no examining trial as set out in Article 1020, nor is there any formal waiver of same."

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You are advised that under the facts stated,
the constable would not be entitled to receive any fee.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Bruce W. Bryant
Assistant

BWB:AMM

APPROVED JUNE 24, 1939

GERALD C. MANN (Signed)

ATTORNEY GENERAL OF TEXAS

APPROVED
Opinion Committee
By B.W.
Chairman