



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Hon. E. Y. Cunningham  
County Auditor  
Navarro County  
Corsicana, T e x a s

Opinion No. 0-2060

Re: Is the constable entitled to collect  
mileage fees for every arrest made?  
And related questions.

Dear Sir:

Your recent request, asking for an opinion of  
this department on the questions as are herein stated,  
has been received.

Your letter reads, in part, as follows:

"The constables of Navarro County are al-  
lowed to collect for two miles at 7½¢ per mile  
on each arrest, making the constable fee \$4.15.  
Is the constable entitled to make this collec-  
tion on mileage for every arrest made?"

"He has collected the past year, in round  
figures, \$2800.00, \$700.00 above the allowed  
amount. Some \$480.00 of this is deducted as  
traveling expenses. As he has been paid 15¢  
mileage on each arrest, is he now entitled to  
enter as expenses this \$480.00 which includes  
automobile expenses?"

"The annual report of one constable for  
1939 that is referred to in the above ques-  
tion shows \$2800.00 gross collections, \$2100.  
for his gross fees, leaving \$700.00 over his  
allowable. From this he deducts his deputy  
constable's salary and his telephone and  
telegraph bill and the above mentioned \$480.  
for traveling expenses which shows that he  
does not owe the county any excess fees for  
the year.

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"This same thing occurred in the year 1938 and on the same basis the county made the constable pay back to the county \$95.00 in excess fees. In the event you rule that he is allowed to deduct his traveling expenses, should the county refund him the money paid for the year 1938?

"Please give us a ruling as to whether he is allowed to make these deductions."

Article 1065, Code of Criminal Procedure, reads, in part, as follows:

"The following fees shall be allowed the sheriff, or other peace officer performing the same services in misdemeanor cases, to be taxed against the defendant on conviction:

"1. For executing each warrant of arrest or capias, or making arrest without warrant, two dollars.

" \* \* \*

"8. For conveying a witness attached by him to any court out of his county, four dollars for each day or fractional part thereof, and his actual necessary expenses by the nearest practicable public conveyance, the amount to be stated by said officer, under oath and approved by the judge of the court from which the attachment issued.

"9. For conveying a prisoner after conviction to the county jail, for each mile, going and coming, by the nearest practicable route by private conveyance, ten cents a mile, or by railway, seven and one-half cents a mile.

"10. For conveying a prisoner arrested on a warrant or capias issued from another county to the court or jail of the county

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from which the process was issued, for each mile traveled going and coming, by the nearest practicable route, twelve and one-half cents.

"11. For each mile he may be compelled to travel in executing criminal process and summoning or attaching witness, seven and one-half cents. For traveling in the service of process not otherwise provided for, the sum of seven and one-half cents for each mile going and returning. If two or more persons are mentioned in the same writ, or two or more writs in the same case, he shall charge only for the distance actually and necessarily traveled in the same."

It is necessary that we bear in mind the fact that the fee statutes are strictly construed and fees by implication are not permitted. It is a very settled matter that the constable, who is compensated on a fee basis is not entitled to any fee at all in a misdemeanor case unless a conviction is obtained.

Tex. Jur., vol. 34, p. 456;  
McCalla vs. City of Rockdale, 46 S.W. 654.

The above mentioned statute expressly provides fees by the way of compensation for the particular services enumerated therein and unless the particular service is actually performed the officer is entitled to no fee for such service. The fees provided therein are allowed only when such services are actually performed by the officer. When an officer executes a warrant of arrest or capias in a misdemeanor case or makes a legal arrest without a warrant, he is entitled to the sum of two dollars. Where it is necessary for such officer to do any traveling in connection with the executing the warrant of arrest or capias, he is entitled to the mileage provided by Article 1065, Code of Criminal Procedure, supra. However, if it is not necessary to do any traveling in executing a warrant of arrest, or capias, or no traveling is actually done by such officer, he is not entitled to any mileage whatsoever.

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Therefore, your first question is respectfully answered in the negative.

With reference to your second question, we direct your attention to Section 4 of Article 3883 and Article 3891, Vernon's Annotated Civil Statutes. Section 4 of Article 3883, supra, reads, in part, as follows:

"In counties containing sixty thousand and one (60,001) and not more than one hundred thousand (100,000) inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor and Collector of Taxes, Four Thousand (\$4000.00) Dollars each; Justice of the Peace and Constable, Twenty-one Hundred (\$2100.00) Dollars each."

Article 3891, Vernon's Annotated Civil Statutes reads, in part, as follows:

"Each officer named in this Chapter shall first out of the current fees of his office pay or be paid the amount allowed him under the provisions of Article 3883, together with the salaries of his assistants and deputies, and authorized expenses under Article 3899, and the amount necessary to cover costs of premium on whatever surety bond may be required by law. If the current fees of such office collected in any year be more than the amount needed to pay the amounts above specified, same shall be deemed excess fees, and shall be disposed of in the manner hereinafter provided.

" \* \* \*

"In counties containing sixty thousand and one (60,001), and not more than one hundred thousand (100,000) inhabitants, district and county officers named herein shall retain one-third of such excess fees until such one-

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third, together with the amount specified in Article 3883, amounts to Forty-seven Hundred and Fifty (\$4750) Dollars. Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3885, amounts to Twenty-six Hundred (\$2600) Dollars.

" . . . ."

Article 3899a reads, in part, as follows:

"At the close of each month of his tenure of office each officer named herein who is compensated on a fee basis shall make as part of the report now required by law, an itemized and sworn statement of all the actual and necessary expense incurred by him in the conduct of his office, such as stationery, stamps, telephone, premiums on officials' bonds, including the cost of surety bonds for his Deputies, premium on fire, burglary, theft, robbery insurance protecting public funds, traveling expenses and other necessary expenses. The Commissioners' Court of the county of the Sheriff's residence may, upon the written and sworn application of the Sheriff stating the necessity therefor, purchase equipment for a bureau of criminal identification such as cameras, finger print cards, inks, chemicals, microscopes, radio and laboratory equipment, filing cards, filing cabinets, tear gas and other equipment in keeping with the system in use by the Department of Public Safety of this State or the United States Department of Justice and/or Bureau of Criminal Identification. If such expenses be incurred in connection with any particular case, such statement shall name such case. Such expense account shall be subject to the audit of the County Auditor, if any, otherwise by the Commissioners' Court; and if it appears that any item of such expense was not incurred by such officer or such item was not a necessary

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expense of office, such item shall be by such auditor or court rejected, in which case the collections of such item may be adjudicated in any court of competent jurisdiction \* \* \*

The precinct officials of Navarro County are compensated on a fee basis and the population of said county, according to the last Federal Census, is Sixty Thousand, Five Hundred and Seven (60,507) inhabitants. Therefore, the maximum compensation for constables of Navarro County under Articles 3883 and 3891, supra, is Twenty-six Hundred (\$2600) Dollars per annum. The constable, mentioned in your letter, collected Twenty-eight Hundred (\$2800) Dollars during the year of 1939. The constable is allowed to retain out of the current fees of his office the amount allowed him under the provisions of Article 3883, supra, together with the salaries of his assistants and deputies, and authorized expenses under Article 3899, and the amount necessary to cover cost of premium on whatever surety bond may be required by law, and if the current fees of such office collected in any year be more than the amount needed to pay the amounts above specified, the same shall be deemed excess fees, and shall be disposed of as provided by law. When the current fees of the constable's office collected in any year is more than the amount needed to pay the amounts above specified, he is allowed to retain one-third of such excess fees until such one-third, together with the amounts specified in Article 3883, supra, amounts to Twenty-six Hundred (\$2600) Dollars per annum.

This department has repeatedly held that a constable operating upon a fee basis is authorized to deduct the necessary expenses incurred in performing the duties of his office including traveling expenses out of his excess fees of office, provided he complies with Articles 3899 and 3891, supra.

It was held in our opinion No. 0-1866 that:

" \* \* \* a constable compensated on a fee basis would be entitled to deduct from his excess fees as an authorized expense of office,

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the necessary traveling expenses, including the expense of gas, oil and a reasonable amount of 'up-keep', incurred by the constable in the discharge of his official duties, provided he complied with Articles 3839 and 3891, supra."

For your convenience we are enclosing a copy of our opinion No. O-1866.

We do not have sufficient facts to answer your third question. However, if you will present us all the facts regarding said question, we will be glad to give it our most careful consideration.

Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams  
Assistant

AW:ob  
Encl. (c. opinion O-1866)

APPROVED MAR 28, 1940

*E. C. Mann*

ATTORNEY GENERAL OF TEXAS

