



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

February 17, 1950

Hon. A. C. Winborn
District Attorney
Houston, Texas

Opinion No. V-1002.

Re: The authority of the Sheriff to refuse to levy out-of-county executions which are not accompanied by the statutory fees or pauper's oaths.

Dear Sir:

Your request for an opinion relating to fees for execution of process is substantially as follows:

"The Civil Department of the Sheriff's Office of Harris County has received, and is still receiving many executions in civil cases from counties other than Harris County requesting that the Sheriff levy and return said executions. They are not accompanied by any fees, as provided by Statute, or paupers' oaths, as provided by the Rules of Civil Procedure. The Sheriff has, without success, requested that the Statutory fees be paid in advance. I am advised that the County Auditor has emphatically stated that unless these fees are collected he will hold the Sheriff personally responsible for them; the fees going to the General Fund and not to the Sheriff personally. The parties who have requested these services of the Sheriff's Department and who have failed to pay the fees in advance are now threatening to sue the Sheriff and his bondsmen for failure to execute and return these executions.

"I am reliably informed that sheriffs of other counties throughout the State are confronted with the same question.

"QUESTION: Is the Sheriff legally justified in refusing to levy and return these out-of-county executions where they are not accompanied with the Statutory fees or

pauper's oaths?"

We agree with the conclusion you have reached in the able brief accompanying your request.

Article 3933, V.O.S., provides the following fees in part:

"Sheriffs and constables shall receive the following fees:

Levying each execution, \$1.00
Return of execution, \$1.00."

Rule 17 of the Texas Rules of Civil Procedure is as follows:

"Except where otherwise expressly provided by law or these rules, the officer receiving any process to be executed shall not be entitled in any case to demand his fee for executing the same in advance of such execution, but his fee shall be taxed and collected as other costs in the case."

Rule 126 of the Texas Rules of Civil Procedure is as follows:

"No sheriff or constable shall be compelled to execute any process in civil cases coming from any county other than the one in which he is an officer, unless the fees allowed him by law for the service of such process shall be paid in advance; except when affidavit is filed, as provided by law or these rules. The clerk issuing the process shall indorse thereon the words, 'pauper oath filed,' and sign his name officially below them; and the officer in whose hands such process is placed for service shall serve the same."

By reason of the first portion of Rule 126 it is evident that the officer executing process in civil cases coming from another county may require his fees in advance for the service of process. It is our opinion that the last portion of the first sentence of said Rule which states, "except when affidavit is filed, as provided by law or these rules" has reference to the affidavit

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filed wherein the inability to pay costs is brought to the attention of the Court. This being true the clerk merely indorses on the process the words "pauper oath filed."

Rule 145 of the Texas Rules of Civil Procedure is the Rule authorizing a party to execute an affidavit that he is too poor to pay the costs of court and his inability to give security therefor.

By reason of the foregoing and particularly the clear import of Rule 126, it is the opinion of this office that a sheriff or constable may require fees in advance or the execution of a pauper's oath for the service of process coming from any county other than the one in which he is an officer.

SUMMARY

A sheriff or constable may not be compelled to execute process in civil cases coming from any county other than the one in which he is an officer unless the fees allowed by law for such service of process are paid in advance or a pauper's oath is filed in lieu thereof.

Yours very truly,

PRICE DANIEL
Attorney General

APPROVED:

J. C. Davis, Jr.
County Affairs Division

Charles D. Mathews
Executive Assistant

By 
Burnell Waldrep
Assistant

BW:bh:mw