



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WAGGONER CARR
ATTORNEY GENERAL**

March 10, 1965

Honorable Don Hall
Criminal District Attorney
McLennan County Courthouse
Waco, Texas

Opinion No. C-399

Re: Whether McLennan County is entitled to collect from the State of Texas under Article 486a, V.C.C.P., the mileage and per diem of certain out-of-state witnesses for the travel and days spent in attendance under the stated facts in Cause No. 15499, State v. Davis.

Dear Mr. Hall:

By letter you have requested an opinion regarding the above question. From your letter, it appears that three witnesses were subpoenaed from without the State of Texas to testify for the State in the above felony prosecution. These witnesses were paid 10¢ per mile for each mile traveled to and from Court and \$5.00 for each day required in such travel and in attendance upon the Court. The issue presented is whether the Comptroller of Public Accounts is to reimburse McLennan County on the basis of 10¢ per mile and \$5.00 per day as set forth in Article 486a, Vernon's Code of Criminal Procedure, or whether such payment is to be made under Article 1036, Vernon's Code of Criminal Procedure, limiting such fees to 3¢ per mile and \$2.00 per day.

Article 486a, above, is entitled "Uniform Act to Secure the Attendance of Witnesses From Without the State in Criminal Procedures". This act was passed in 1951 by the 52nd Legislature, page 798, chapter 441, and is plain and unambiguous in its meaning. If an appropriation has been provided by the Legislature for payment hereunder, the witnesses shall be paid by the Comptroller on the basis of 10¢ per mile and \$5.00 per day. Attorney General's Opinion V-1391 (1952).

The 58th Legislature, Regular Session, by Acts 1963, page 1404, chapter 525, appropriated the sum of \$2,000.00 for "expenses of witnesses in felony cases or before a grand jury summoned under the provisions of Article 486a, C.C.P., to attend and testify in this State."

Honorable Don Hall, Page 2 (C-399)


Due to the passage of Article 486a and appropriation thereunder as set out above, the relevant portions of Attorney General's Opinions No's. O-4251, V-1391 and WW-113 are no longer in point.

SUMMARY

McLennan County is entitled to collect from the State of Texas under the provision of Article 486a, V.C.C.P., the sum of 10¢ per mile for each mile by the ordinary travel route to and from the Court where the prosecution is pending and \$5.00 for each day that they were required to travel and attend as witnesses a felony prosecution in McLennan County, having been summoned as out-of-state witnesses to attend and testify in a felony prosecution.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By: 
CHARLES B. SWANNER
Assistant Attorney General

CBS/lh

APPROVED:
OPINION COMMITTEE
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Robert Norris
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Frank Booth

APPROVED FOR THE ATTORNEY GENERAL
BY: Stanton Stone