



**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN, TEXAS 78711

WAGGONER GARR  
ATTORNEY GENERAL

February 4, 1966

Honorable Albert E. Searcy  
County Attorney  
Kimble County  
Junction, Texas

Opinion No. C-596

Re: The disposition of  
fines and Court costs  
for arrests and convict-  
ions in County Courts  
by game wardens under  
Article 1377b, Vernon's  
Penal Code.

Dear Mr. Searcy:

You have recently requested an opinion of this office regarding the disposition of fines and costs of court in County Courts under Article 1377b, Vernon's Penal Code. You have particularly inquired about the disposition to be made when the arrest has been made by a game warden. You have stated that, in your opinion, when the arrest has been made by a game warden, that he should be paid a \$2.00 arrest fee which would be paid as a part of the cost assessed incident to any fine paid and that such fee should then be remitted by him to the Parks and Wildlife Department. You state further that 100% of the fine should be remitted to the County and all other costs should be paid to the Officers' Salary Fund of the County.

You further state in your request that you raised the question because of the fact that under the provisions of Article 1377, Vernon's Penal Code, and Attorney General's Opinion No. V-1022, which in part interpreted Article 1377, the Game and Fish Department (presently the Parks and Wildlife Department) was due 100% of fines assessed under similar conditions presently expressed in Article 1377b. Likewise, you assumed the \$2.00 arrest fee to be payable to the game warden who made the arrest and that he should remit same to the Parks and Wildlife Department.

Article 1377 was repealed in 1959 by what is now Article 1377b. The pertinent provision of Article 1377, V. P.C., involved in the question you present was the last paragraph of Section 2. This paragraph reads:

"Provided that all fines collected under provisions of this Act assessed on the arrest of any state game warden shall be paid into the special game fund of the State of Texas."

When Article 1377, V.P.C., was repealed and the offense in general re-enacted as Article 1377b, V.P.C., the aforementioned proviso was deleted from the subsequent Act. Section 4 of Article 1377b still provides that violators thereunder will be subject to arrest by any game warden. However, no provision is made for paying fines assessed under the Act to the special game fund of the State of Texas if arrests are made by game wardens.

Now, under the provisions of Article 53.01, Code of Criminal Procedure, 1966, the sheriff or other peace officer performing the services of the sheriff in misdemeanor cases are allowed a fee of \$3.00 for making an arrest with or without warrant. Article 905, Vernon's Penal Code, provides that game wardens shall have the same authority as sheriffs and other peace officers when making arrests and serving process concerning various game law violations. Article 53.02, Code of Criminal Procedure, 1966, provides that constables, marshals or other peace officers who execute process and perform services for justices in criminal action shall receive the same fee as allowed the sheriff for the same services.

Article 944 through Article 951, Code of Criminal Procedure, 1925, were not repealed by the Code of Criminal Procedure, 1966. Article 54.02, Section 1(b), new Code. Article 949, Code of Criminal Procedure, 1925, reads:

"Money collected by an officer upon recognizances, bail bonds and other obligations recovered upon in the name of the State under any provisions of this Code, and all fines, forfeitures, judgments and jury fees, collected under any provision of this Code, shall forthwith be paid over by the officers collecting the same to the county treasurer of the proper county, after first deducting therefrom the legal fees and commissions for collecting the same."

Article 3898, Vernon's Civil Statutes, reads:

"The fiscal year, within the meaning of this Act, shall begin on January 1st of each year; and each district, county and precinct officer shall file his report and make final settlement required in this Act not later than February 1st of each year; provided, however, that officers receiving an annual salary as compensation for their services shall, by the close of each month, pay into the Officers' Salary Fund or funds, all fees commissions and compensation collected by him during said month. Whenever such officer serves for a fractional part of the fiscal year, he shall nevertheless file his report and make final settlement for such part of the year as he serves and shall be entitled to such proportionate part of his compensation as the time for his service bears to the entire year."

In view of the Articles heretofore mentioned and quoted, we inform you that it is our opinion that where a game warden has arrested the offender under Article 1377b and the offender is convicted in the county court, the arresting warden is entitled to an arrest fee of \$3.00 which fee, when collected, should be remitted by him to the Parks and Wildlife Department of the State of Texas. Said fee should be taxed against the convicted defendant. We are further of the opinion that the fine imposed by the county court should be remitted one hundred percent (100%) to the county treasurer, after deducting therefrom all other legal fees and commissions for collecting same. These other legal fees and commissions should be paid into the Officers' Salary Fund of the county.

#### SUMMARY

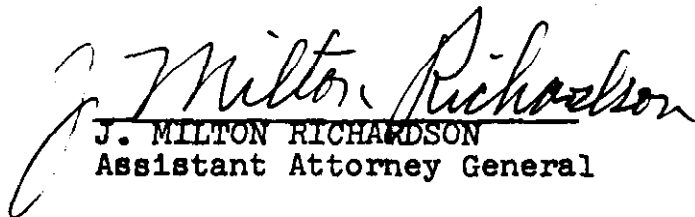
In the event a game warden arrests a violator of the provisions of Article 1377b, upon conviction of the violator in the county court the arresting game warden is entitled to an arrest fee of \$3.00 to be remitted by him to the Parks and Wildlife Department.

One hundred percent (100%) of the fine assessed by the county court against the violator upon his conviction and the trial fees taxed against him shall be remitted to the county treasurer for deposit into the Officers' Salary Fund of the county.

Honorable Albert E. Searcy, page 4 (C-596)

Yours very truly,

WAGGONER CARR  
Attorney General of Texas

  
J. MILTON RICHARDSON  
Assistant Attorney General

JMR/br:aa

APPROVED:

OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL  
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