

# THE ATTORNEY GENERAL OF TEXAS

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October 1, 1969

Honorable Lowell C. Holt  
Criminal District Attorney  
Upshur County Courthouse  
Gilmer, Texas

Opinion No. M- 483

Re: Who should pay the  
initial court cost  
deposit when Objec-  
tions are filed by  
the condemnee in an  
eminent domain pro-  
ceeding, after an  
Award by the Special  
Commissioners.

Dear Mr. Holt:

You asked the following question: "Who should pay the initial court cost deposit when Objections are filed by the condemnee in an eminent domain proceeding, after an Award by the Special Commissioners?"

Article 3267, Vernon's Civil Statutes, determines when each party shall pay cost in a condemnation action. You will note the language of Article 3267 with regard to when the condemnee shall pay the costs. It states as follows:

". . . but if the amount awarded by the commissioners as damages or the judgment of the county court shall be for the same or less amount of damages than the amount offered before proceedings were commenced, then the costs shall be paid by the owner of the property."

It has long been held in this State that upon a filing of Objections to Award of Commissioners by condemnor or condemnee findings of Commissioners are nullified and a trial de novo is required, Culligan Soft Water Service v. State, 385 S.W.2d 613 (Tex.Civ.App. 1964, error ref. n.r.e.); Milam County v. Akers, 181 S.W.2d 719 (Tex.Civ.App. 1944, error ref. w.o.m.). The Supreme Court in Elliott v. Joseph, 163 Tex. 71, 351 S.W.2d 79 (1961) stated with regard to the action in the County Court as follows:

". . . The trial in the county court is a de novo appellate proceeding. State v. Nelson, 160 Tex. 515, 334 S.W.2d 788."

The Supreme Court recognizes that when Objections are filed to the Award of Special Commissioners there has been an appeal to the County Court. However, it is not an appeal as from a trial court judgment, but it is to be a de novo proceeding in the County Court.

Rule 142, Texas Rules of Civil Procedure, states:

"The clerk may require from the plaintiff security for costs before issuing any process, but shall file the petition and enter the same on the docket. . . ."

In City of Houston v. Susholtz, 22 S.W.2d 537 (affm'd 37 S.W.2d 728, Tex.Comm.App. 1931), the Court held as follows:

"Furthermore, at least by analogy to like appeals from justice courts, it would seem to follow, first, that the perfection of this resort from the commissioners' award to the county court vacated the action of the lower body and gave to the proceeding as it then stood in the intermediate court the same status as if it had been originally commenced there; . . ."

The Supreme Court in Denton County v. Brammer, 361 S.W.2d 198 (Tex.Sup. 1962) at page 200 states:

". . . We recognize that the filing of the original objections and exceptions by Brammer [the condemnee] simply converted the special condemnation proceedings into a suit and invested the county court with jurisdiction of the subject matter of the case. See Fitzgerald v. City of Dallas, Tex.Civ.App., 34 S.W.2d 682, wr. ref.; State v. Nelson, 160 Tex. 515, 334 S.W.2d 788.

"[3] The filing of the original objections in this case vacated the award of the special Commissioners. The condemnor, Denton County, became the plaintiff and Brammer, the condemnee, became the defendant. . . ."

It would seem clear then from the decisions by the appellate courts in Texas that when an Objection is filed, regardless of which party files the same, the action by the Commissioners is completely nullified and vacated. The condemnor becomes the Plaintiff, and the condemnee becomes the Defendant.

A condemnation case then proceeds to trial on the pleadings, i.e., the Petition filed by the condemnor to condemn the land belonging to the condemnee. It is not necessary for the condemnee to plead anything, i.e., particularize his damages or set forth any specific damage claims, Fitzgerald v. City of Dallas, 34 S.W.2d 682 (Tex.Civ.App. 1930, error ref.); Kennedy v. City of Dallas, 201 S.W.2d 840 (Tex.Civ. App. 1947, error ref.). Therefore, what we have is a case in the County Court which has been filed by the condemnor. Since the condemnor has filed his Petition in condemnation the burden of paying the fee of the County Clerk as required in Article 3930(b), Section 1A (ii), Vernon's Civil Statutes, falls upon the condemnor regardless of who has filed Objections. At a later time should the judgment of the County Court be for an amount the same as, or less than, the original amount offered by the condemnor to the condemnee then under Article 3267, Vernon's Civil Statutes, the condemnor could recover these costs from the condemnee.

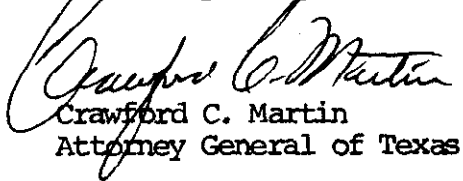
This Opinion should not be considered in conflict with Opinion No. M-142 wherein this office held that fees cannot be paid by a county to its own County Clerk. The basis for Opinion No. M-142 was that to allow a county to pay this fee to its own County Clerk would be an unconstitutional transfer of tax monies. This office went on to state in that Opinion the fees were due and payable by condemnors other than a county when an Objection is filed or a Judgment is entered.

When the State of Texas is the condemnor, Article 3930(b), Section 1A (ii), Vernon's Civil Statutes, should not be considered in conflict with Article 4357 of Vernon's Civil Statutes. The State of Texas cannot make immediate payment of deposit of cost. The Clerk would have to prepare a proper claim upon docketing the condemnation case, which claim would then have to be presented to the State Comptroller. Upon being presented a properly audited claim which has been properly verified as provided by Article 4357, the Comptroller could then issue a warrant in the amount of the fee for filing a condemnation case which is provided for under Article 3930(b), Section 1A (ii), Vernon's Civil Statutes.

S U M M A R Y

The condemnor in a condemnation proceeding should pay the initial court cost deposit, if required, when Objections are filed by either party to the Award of Special Commissioners. Under Article 3267, Vernon's Civil Statutes, if the judgment of the County Court is for the same or less amount of damages than the amount offered before the proceedings were commenced, then the condemnor may recover the court cost deposit from the condemnee.

Yours very truly,

  
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