



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

September 18, 1972

Honorable Robert F. Burns, Jr.
County Attorney
Walker County Courthouse
P. O. Box 614
Huntsville, Texas 77340

Opinion No. M-1220

Re: Questions relating
to the form of the
Sheriff's monthly
bill for feeding of
prisoners.

Dear Mr. Burns:

In your recent letter to this office, you asked our opinion concerning the following three questions:

1. Does the form in which the Sheriff of Walker County submits his monthly bill for feeding prisoners in his care and custody constitute an illegal bill?
2. Is the Sheriff required to submit his monthly bill for feeding prisoners in his care and custody in a particular form?
3. Is the Sheriff required to submit a separate bill for labor in preparing meals for prisoners in his care and custody or may such bill for labor be included in the Sheriff's monthly bill for feeding such prisoners, without specifically setting forth the amount paid for labor in connection with the preparation of the meals?

As a part of your request, you enclosed a monthly county food bill for May of 1972 submitted by the Sheriff of Walker County to the Commissioner's Court. That bill lists the prisoners by name, shows the number of days each was in jail during the month, the offense charged against each, the Court, and the judgment where applicable. At the

bottom of the submitted bill are the notations "O.K. W.D." and "Total Bill \$413.29". An examination of this bill reveals that 61 prisoners were in jail a total of 291 "days" during the month of May, 1972. There is nothing from the bill itself to show the derivation of the \$413.29 amount.

Article 1046, Vernon's Code of Criminal Procedure, provides as follows:

"At each regular term of the Commissioner's Court, the Sheriff shall present to such Court his account verified by his affidavit for the expense incurred by him since the last account presented for the safekeeping and maintenance of prisoners, including guards employed, if any. Such account shall state the name of each prisoner, each item of expense incurred on account of such prisoner, the date of each item, the name of each guard employed, the length of time employed and the purpose of such employment."
(Emphasis added)

Without more, it seems apparent that the bill submitted by the Sheriff of Walker County as above described would not satisfy the requirements of Article 1046, set out above. Section 2 of Article 1040, Vernon's Code of Criminal Procedure, requires in part the following in regard to the Sheriff's annual report:

" . . . The Sheriff shall in such report furnish an itemized verified account of all expenditures made by him for feeding and maintenance of prisoners, accompanying such report with receipts and vouchers in support of such items of expenditure, and the difference between such expenditures and the amount allowed by the Commissioner's Court shall be deemed to constitute the net profits for which said officer shall account as fees of office."

Taken together, Articles 1040 and 1046 require that the Sheriff report considerably more concerning the support and maintenance of prisoners than just the number of prisoners and their term of confinement.

The predecessor of Article 1040, (Article 1142 of the Code of Criminal Procedure, as amended in 1911), said nothing about "fees of office" and it was determined in the case of Harris County vs. Hammond, 203 S.W. 451 (Tex.Civ.App. 1918, error ref.) that the per diem allowance for feeding and maintenance of prisoners was a reimbursement of actual expenses and not a "fee of office" for which accurate reporting was required. That case determined that detailed accounting of the expenses incurred in the maintenance and feeding of prisoners was not necessary. When Article 1040, supra, was enacted in 1923, there was a conceptual change made which necessitated full and accurate reporting by the Sheriff to the Commissioner's Court of his monthly food bill. Once it was determined that a Sheriff had to consider any excess of allowance over actual expenses as "fees of office", full accounting and reporting became essential. Subsequently, however, there was enacted the Officers Salary Act of 1935, codified as Article 3912e, Vernon's Civil Statutes, which requires that no county of 20,000 or more population according to the last preceding Federal Census shall pay to any county officer any fee or commission for any service by him performed as such officer. Article 16, Section 61 of the Texas Constitution now requires that Sheriffs be compensated on a salary basis. Obviously, any fees or allowances provided a Sheriff as described in Article 1040, supra, are not now permissible. See Attorney General's Opinion No. V-655, 1948, holding that Article 3912e, V.C.S., had superseded Section 1 of Article 1040.

We are left now with the necessity of determining the effect of Article 1046, supra, on reports by the Sheriff to the Commissioner's Court. The reasoning behind the Hammond case, supra, depended upon the Sheriff being compensated by an allowance based on a per prisoner charge set by the Court within the Statutory limits. At the time of Hammond no consideration was given, and no accounting was necessary, to the determination of excesses or deficiencies in this allowance. The Sheriff bore the loss or enjoyed the gain. As stated above, Article 1040 was amended to make excesses accountable as "fees of office". Subsequent enactment of Article 3912e eliminated "fees of office" as a concept, but made the cost of feeding prisoners strictly a county expense. Since the Sheriff is not on an "allowance" any more, but, instead, accounts to the Commissioner's Court for his expenditures incurred in the feeding of prisoners, a more strict accounting procedure is understandably required. Article 1046, supra,

contemplates an accounting for "each item of expense incurred on account of such prisoner". Obviously, under such a requirement, the Sheriff must carefully account for his expenditures in the feeding of prisoners in his custody, since such accounting will be necessary to determine reimbursement from the County. We, therefore, conclude, in answer to your first question, that a monthly bill for feeding prisoners such as the one submitted by the Sheriff of Walker County for the month of May, 1972, is not sufficient and does not comply with the requirements of Article 1046.

Your second question asks if the monthly bill is required by statute to be submitted in a particular form. Our answer to this is that need for a particular form is not implicit in the statutes but the monthly bill must provide in good accounting form the information required in Article 1046.

Your third question concerns the cost of preparing meals and the relation of such item to the monthly bill for feeding prisoners. Article 1046 requires the disclosure of "each item of expense incurred on account of such prisoner". Cost of preparing meals is such an item and should be accounted for and itemized separately in the monthly bill.

We understand the value to the Sheriffs of this State in specifying a particular form to be used in preparing the monthly bill for feeding prisoners in his charge, but no one form would fit all circumstances to be found statewide and we will not attempt to prescribe one. The Commissioner's Courts of this State are entitled to know precisely what the Sheriff in their county actually expends in feeding prisoners and how that expenditure is determined. Any form which accomplishes this in accord with Article 1046 will be satisfactory.

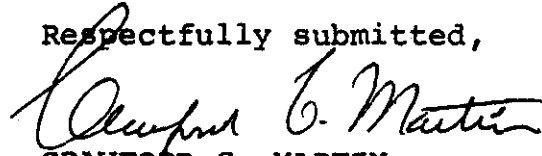
S U M M A R Y

The Sheriff's monthly food bill for feeding prisoners in his care required by Article 1046, Vernon's Code of Criminal Procedure, to be submitted to the Commissioner's Court must specifically show the name of each prisoner, each item of expense incurred on account of such prisoner, and the date of each

item. The monthly county food bill for May of 1972 submitted by the Sheriff of Walker County to the Commissioner's Court does not satisfy these requirements.

Article 1046 does not, however, prescribe a specific form to be used by the Sheriff in making his verified account of expense incurred by him in the feeding of prisoners. It is proper and necessary to include in this monthly food bill the cost of labor involved in preparing the meals for prisoners.

Respectfully submitted,



CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by James H. Quick
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Kerns Taylor, Chairman
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SAMUEL D. McDANIEL
Staff Legal Assistant

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Executive Assistant

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