



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

April 10, 1953

Hon. Andrew P. Johnson  
County Attorney  
Dimmit County  
Carrizo Springs, Texas

Letter Opinion No. MS-20

Re: The expense reimbursements  
to which out of county  
witnesses in a criminal  
case are entitled under the  
submitted facts.

Dear Sir:

You have asked us in substance the following questions:

What fees and mileage are allowed out of county witnesses in felony cases for second appearance in case at different terms of court? What fees and mileage are allowed an out of county State Highway Patrolman as a witness in a felony case?

Article 1036, Vernon's Code of Criminal Procedure governs witness fees and mileage of out of county witnesses in felony cases and provides in part as follows:

"(1). Any witness who may have been subpoenaed, or shall have been recognized or attached and given bond for his appearance before any Court, or before any grand jury, out of the county of his residence, to testify in a felony case regardless of disposition of said case, and who appears in compliance with the obligations of such recognizance or bond, shall be allowed Three (3) Cents per mile going to and returning from the Court or grand jury, by the nearest practical conveyance, and Two Dollars (\$2) per pay for each day he may necessarily be absent from home as a witness in such case;"

In Attorney General's Opinion O-1982, (1940), a copy of which is enclosed, this office held that a witness in a criminal case in district court is entitled

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to traveling expenses, for one term and also for the subsequent term to which the case was passed by agreement.

In connection with your question concerning witness fees of State Highway Patrolmen, Subdivision 12 (a) of Section 2 of Article III of Chapter 499, Acts 52nd Legislature, 1951, p. 1228 reads as follows at p. 1436:

"No traveling expenses shall be claimed, allowed, or paid unless incurred while traveling on State business. Any State official or employee entitled to traveling expenses out of State appropriations herein made, who is legally or officially required to be present at the trial of any State case, shall not claim traveling expenses from the State and also from the court wherein said case is pending. If by oversight duplicate claims are filed for said traveling expenses collected, then said officers or employees shall reimburse and refund to the State Treasurer an amount equal to the respective amount collected under such witness fees and mileage claim."

This office held in Attorney General's Opinion 0-2465 (1940), a copy of which is enclosed,

". . . where an officer or state employee is subpoenaed as a witness before the court in a felony case or a grand jury investigating a felony in a county other than that of his residence where such officer or employee is or has been officially connected with the case or has rendered any official service and has performed some official duty in connection therewith, such officer or employee may claim mileage fees and the per diem as allowed by Article 1036, supra, or he may claim the traveling expenses as allowed by the general appropriation bill; however, he cannot claim both the statutory mileage and witness fee and the traveling expense allowed, but may claim either at his option."

We therefore hold that duly subpoenaed out of county witnesses, including State Highway Patrolmen, in a felony case, are entitled to three (3) cents per mile going to and returning from the court, by the nearest practical conveyance, for one term and also for the subsequent term to which said case was continued by the court and are also entitled to two dollars (\$2) per day for each day they may necessarily be absent from home as a witness in such case, including different terms of court. However, if State Highway Patrolman claims mileage fee and the per diem as allowed by Article 1036, supra, he cannot claim expenses under the General Appropriation Bill.

At the time Attorney General's Opinions 0-1982 and 0-2465 were written, out of county witnesses were entitled to not to exceed four (4) cents per mile; however, the law was changed in 1941 so that they are now only allowed three (3) cents per mile.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By  
Sam C. Ratliff  
Assistant

SCR:am:mjs  
Encls.