



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN 11, TEXAS

WAGGONER CARB  
ATTORNEY GENERAL

November 10, 1965

Honorable Wayne B. Davis  
County Attorney  
Goliad County  
Goliad, Texas

Opinion No. C-542

Re: If a fine of \$1.00 and costs  
is assessed in the Justice  
of the Peace Court, how much  
money is to be paid?

Dear Mr. Davis:

This is in response to your recent request for an opinion  
of this office concerning the following question:

"If a fine of \$1.00 and costs is assessed  
in the Justice of the Peace Court, how  
much money is to be paid?"

For the purpose of this opinion it is assumed that your  
question is directed toward cases involving a violation of  
any Penal Statute or of the Uniform Act Regulating Traffic  
on Highways. This is assumed because the new Code of Criminal  
Procedure for the State of Texas will effect a change in  
court costs in Justice of the Peace Courts in these types of  
cases.

Article 1068, Vernon's Code of Criminal Procedure pro-  
vides as follows:

"If the defendant pleads guilty to a  
charge before a Justice, the fee allow-  
ed the attorney representing the State  
shall be ten dollars (\$10.00). The  
attorney who represents the State in  
a criminal action in a Justice's Court  
shall receive, for each conviction on  
a plea of not guilty, where no appeal  
is taken, fifteen dollars (\$15.00)."

On January 1, 1966, the effective date of the new Code  
of Criminal Procedure, Article 1068 will have been repealed  
by Article 53.03, Code of Criminal Procedure of Texas, 1966.  
Said Article provides as follows:

"The attorney representing the State be-  
fore a Justice Court shall receive no  
fee for his appearance before said Court

in a case involving the violation of any Penal Statute or of the Uniform Act Regulating Traffic on Highways."

Article 1074, Vernon's Code of Criminal Procedure, provides as follows:

"In each case of conviction in a County Court, or a County Court at law, whether by a Jury or by a Court, there shall be taxed against the defendant or against all defendants, when several are held jointly, a trial fee of five dollars (\$5.00), the same to be collected and paid over in the same manner as in the case of a jury fee, and in the Justice Courts the trial fee shall be the sum of five dollars and fifty cents (\$5.50)."

As of January 1, 1966, the above quoted Article 1074 will have been repealed by Article 53.06, Code of Criminal Procedure of Texas, 1966. Said Article 53.06 will provide as follows:

"In each case of conviction in a County Court or a County Court at law, whether by a Jury or by a clerk, there shall be taxed against the defendant or against all defendants, when several are held jointly, a trial fee of \$5.00, the same to be collected and paid over in the same manner as in the case of a jury fee; and there shall be no trial fee allowed in a Justice Court in a case involving the violation of any Penal Statute or of the Uniform Act Regulating Traffic on Highways."

In view of the above quoted Articles, it is seen that as of January 1, 1966, there will no longer be any state's attorney fee or trial fee in the Justice Courts, involving the violation of any Penal Statute or of the Uniform Act Regulating Traffic on Highways.

Since the total of these two fees on a plea of guilty formerly was \$15.50, and on a plea of not guilty where a conviction was obtained, \$20.50, it is the opinion of this office that the above mentioned sums, as of January 1, 1966, may not be assessed as costs in Justice Courts in cases involving the

violation of any Penal Statute or of the Uniform Act Regulating Traffic on Highways.

This is not to say, however, that in no instance may any costs at all be assessed in Justice of the Peace Courts in criminal cases. Article 53.01 of the 1966 Code specifically sets out certain fees for services which, if performed by the sheriff or any other peace officer in a misdemeanor case, are to be taxed against the defendant on conviction. Of course these fees will not be present in every case in Justice of the Peace Courts, but if they are performed, they shall be taxed against the defendant as costs in the case. For example, Article 53.01 (1) provides a fee of three dollars (\$3.00) payable to the sheriff for executing a warrant of arrest or *capias*, or making an arrest without warrant. In the event any one or more of the fees provided for in Article 53.01 are applicable, they shall be taxed as court costs against the defendant in misdemeanor cases in Justice Courts.

It is also pointed out that Article 54.02 (b) of the 1966 Code specifically sets out that Article 1075 of the Code of Criminal Procedure, 1925, is not repealed. This Article provides for a jury fee to be assessed against the defendant in a case tried by a jury in a Justice Court in the event of a conviction.

It is, therefore, impossible to specifically answer your question. If, after January 1, 1966, a fine of \$1.00 and costs is assessed in a Justice of the Peace Court, and there have been no costs incurred then only \$1.00 will be assessed. However, if some of these costs have been incurred, they shall be assessed against the defendant. However, after the above mentioned date, Articles 53.03 and 53.06 prevent the assessment of trial fees or State's attorneys fees in cases involving the violation of any Penal Statute or of the Uniform Act Regulating Traffic on Highways brought in Justice of the Peace Courts.

Subsequent to your request, another County Attorney requested our opinion as to the constitutionality of Article 53.03. In order to avoid writing another opinion, we will answer his question in this opinion, and send him a copy.

As we are unable to find a constitutional provision that makes it mandatory that the Legislature provide a fee to be allowed the attorney representing the State in criminal cases

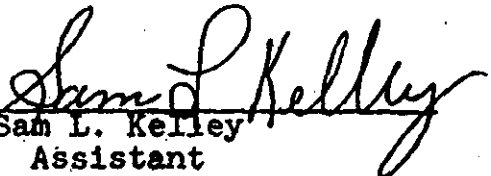
in Justice of the Peace Courts, it is our opinion that Article 53.03 is constitutional

SUMMARY

Articles 53.03 and 53.06, Code of Criminal Procedure of Texas, 1966, abolish trial fees and State's attorneys fees in Justice of the Peace Courts. However, other costs shall be assessed in these types of cases if they have been incurred. Article 53.03 is constitutional.

Yours very truly,

WAGGONER CARR  
Attorney General of Texas

By   
Sam L. Kelley  
Assistant

SLK/lh

APPROVED:

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