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## Report of Justice Court Committee

Dicta Editorial Board

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## REPORT OF JUSTICE COURT COMMITTEE

**T**HE undersigned members of the committee were appointed to investigate and report concerning the complaints recently made through the public press of the city and county of Denver as to certain conduct of Denver's justices of the peace. Thereafter, at request, the scope of our inquiry was enlarged to include the entire field of the justice courts, including the justices, clerks and constables. Your committee respectfully reports as follows:

1. Prior to the adoption in 1902 of Article XX of the Colorado constitution, creating the City and County of Denver, the justices of the peace in Denver, like other justices of the peace, received compensation through the collection of fees provided by the statutes of Colorado for official services of such officers.

2. By said Article XX of the constitution of Colorado it is provided: "If any officer of said city and county of Denver shall receive any compensation whatever, he or she shall receive the same as a stated salary, the amount of which shall be fixed by the charter, and paid out of the treasury of the city and county of Denver in equal monthly payments."

3. In accordance with the foregoing constitutional provision, there were incorporated in the charter of the city and county of Denver, adopted in 1904, provisions for the payment of salaries to all officers of the city and county. Section 153, now section 318, provides that Denver's two justices of the peace shall each receive an annual salary of \$2,000.00. The charter does not classify constables as "officers." Hence they come under the heading of "clerks and employes." The salaries of the constables and clerks are not fixed by the charter of the City and County of Denver, or by any special ordinance, but are stated in the annual appropriation ordinance, known as the "budget." At the present time these salaries are: Constable and chief clerk, \$150.00 each per month; Deputy constable and deputy clerk, \$125.00 each per month.

The charter, section 176, says of the justices: "Each shall appoint his own constable and clerk." The only authority for the salaries of the constable and clerk is in the budget ordinance.

Several provisions were written into the charter forbidding salaried officers receiving any compensation other than their salaries.

By section 221, now section 108, it is provided: "No officer, deputy, clerk or employe of such officer, shall receive or accept any fee, compensation or payment, other than his salary as now or hereafter fixed by this charter, or by ordinance, for any work or service performed by him of any official nature, or under color of office, whether performed during or after official business hours."

By section 159, now section 304, it is provided that "no officer shall be paid any fee or compensation beyond that fixed by the charter."

By an amendment adopted February 14, 1913, now section 312, it is provided: "No official or employe shall solicit or receive any pay, commission, money or anything of value, \* \* \* except lawful compensation or salary as such officer or employe."

4. The charter commands that all fees collected by public officers or employes for their services, shall be by such officers or employes paid into the treasury of the city and county. See section 221, now section 108; also section 222, now 109; section 223, now 110; and section 159, now section 304.

It is clear from the foregoing that since the adoption of the charter no officer or employe of the city and county has had any right to receive or accept any compensation for public services, other than his salary, and further, that it is and has been the duty of such officers and employes to turn in to the treasury of the city and county all fees legally collected.

5. Section 7890 of the Compiled Laws of Colorado (an act of the General Assembly passed in 1891) sets forth a schedule of fees in the justice courts consisting of twenty-eight items, ranging from five cents to one dollar. The total justice's fees in any civil case shall not exceed five dollars. Under the law it has been and is the duty of the justices of the peace, clerks and constables to charge the fees fixed by the statute, and no more. No justice of the peace, clerk or constable is entitled to charge or collect any fee for any service unless such charge is authorized by law.

6. Many years ago, probably long prior to the creation of the city and county of Denver, it became the established custom in Denver for justices of the peace to require the plaintiff, at the time a suit was begun, to deposit with the justice \$3.00 in an ordinary civil case, and \$5.00 in an attachment case, to cover the costs for services to be performed. This requirement of a deposit in advance on account of costs has been continued down to the present time. It is a practical necessity that such a deposit be required, because under the law, officers are required to collect the legal charges in advance. It is necessary, however, that there be refunded to the litigant at the close of the litigation all unearned costs. Otherwise, the requirement of such a deposit would amount to an illegal charge where the total earned fees do not amount to as much as the required deposit. After the creation of the city and county of Denver, at intervals, some of the justices refunded the balance of the deposit, if any, over and above the earned fees, to those litigants who demanded such refund.

7. A. T. Orahood became justice of the peace on June 1, 1923. On that day letters were sent from the office of the Auditor of the city and county of Denver to Justices of the Peace Orahood and Bray, as follows:

DENVER  
OFFICE OF THE  
AUDITOR

GEO. D. BEGOLE,  
AUDITOR

WM. H. McNICHOLS,  
DEPUTY

June 1, 1923.

Hon. A. T. Orahood,  
Justice of Peace,  
Court House, City.

Dear Sir:

In accordance with conference held this date, we will endeavor, starting tomorrow morning, June 2, to establish a flat fee system in the Justice Courts and we feel that the same will meet with the approval of every practicing attorney in the city.

In accordance with the above you will, effective on the above date make the following charges in the Justice Courts, namely:

For filing straight suit .....	\$3.00
“ “ F. E. and D. suits .....	4.00
“ “ attachment suits .....	5.00
“ “ Replevin suits .....	5.00

For filing Answer .....	2.00
“ “ Intervention .....	5.00
Docketing change of Venue .....	2.00
For Jury .....	3.50
Alias Attachment writ .....	1.50

These charges will carry the case in its entirety to and including judgment and due to the fact that you will place no limit upon reasonable continuances and services to that point, there should be no refunds for unearned costs, as we feel that these two items will offset each other.

The following charges will be made for services after judgment:

Executions .....	\$2.00
Execution and garnishee .....	3.00
Traverses .....	2.00
Transcripts .....	1.00
Appeals .....	1.50
Restitution .....	2.00
Foreclosure on Mechanic's lien .....	6.00

We will appreciate your posting this notice in the office of your courts and seeing that the same is made effective immediately.

Yours very truly,

GEO. D. BEGOLE,  
By I. H. MERRITT, Asst. Deputy.

When these letters were written, Justices Bray and Orahood posted the same in their offices, and since that time the justices have followed the fee system therein outlined. When Justice White, in 1924, succeeded Justice Bray, he found in operation this flat fee system, and he has since followed it.

The fees fixed in the foregoing communication are without any legal basis. They are not in accordance with the statutes of Colorado. The direction that no refunds be allowed is also illegal.

At the time Justices White and Orahood were appointed, a practice or custom was in existence of the justices, clerks and constables making and collecting certain charges not mentioned in the said letter, and retaining the same as compensation in addition to stated salaries. This practice has been continued by Justices Orahood and White. There has never been any legal justification for this practice.

The following fees have been charged and retained by the justices: Jury fee, \$2.00; Granting change of venue, \$1.50; Criminal bond (in business hours), \$2.00; Criminal bonds taken after business hours, \$15.00. The constables have

charged and retained \$5.00 on execution sales, and the clerks have made small charges for making out papers for litigants when so requested by them.

8. On September 23, 1931, after a conference with certain public officials of Denver, the two justices sent the following written communication to Carl S. Milliken, Commissioner of Safety.

CITY AND COUNTY OF DENVER  
JUSTICE COURT

September 23, 1931.

Hon. Carl S. Milliken,  
Commissioner of Safety,  
City Hall, City.

Dear Sir:

Pursuant to our conversation this morning and effective at once, for those desiring Justice Court criminal bonds on Sundays, holidays, nights and out of working hours, we will make a charge of \$15.00.

Respectfully,

WALTER E. WHITE,  
ALBERT T. ORAHOOD.

This letter was thereupon posted at the city hall for the information of the public. Since the date of said letter, the charge of \$15.00 for taking and approving criminal bonds out of office hours has been collected by the justices, and retained by them as compensation for their services. This practice of charging said \$15.00 had been agreed upon with said city officials at the aforementioned conference. Under the Colorado statute, the fee of a Denver justice of the peace for taking and approving a criminal bond at any time is twenty cents.

The charge which the justices were making of \$15.00 for taking and approving criminal bonds out of office hours, was known to the city attorney's office, and no objection was made thereto by said office.

9. Under the law of Colorado a party answering a writ of garnishment in a justice court is entitled to be paid eighty cents. The justices in Denver have therefore always collected said eighty cents from the party who causes a garnishment writ to issue, the said eighty cents being included in the \$5.00 docket fee in garnishment cases. Many parties who answer garnishment writs do not call for this eighty cents, and the

moneys thus left remaining in the hands of the justices amount in the course of time to a considerable sum. There is no law authorizing a justice of the peace to turn this money into the treasury of the city and county. Until such a law is passed, it is the duty of the justices to hold the said money subject to the demand of the various parties to whom it is due. Justices White and Orahod are not subject to criticism for retaining said money until a law is passed (which should undoubtedly be enacted) requiring such fees to be paid into the treasury of the city and county. Such a law has recently been passed with reference to similar funds in the district and county courts.

10. The committee finds that the published statement that Justice of the Peace White has failed to turn over to the city \$15.00 in costs alleged to have been collected in the Edleman case is unfounded. The \$15.00 mentioned was never paid into the court.

11. By the adoption of practices hereinbefore set forth, some of which have been concurred in by certain of the city and county officials, it is the opinion of the committee that the city and county has received fees in a large amount to which it was not entitled, and that it has been deprived of other fees to which it was entitled. Only a long and expensive, and in our opinion, a useless audit, could determine these amounts. So far as the committee can learn from the audits already made and in progress, neither of the justices is in any way intentionally short in his accounts.

12. The Colorado statute provides for a fee of \$1.00 to a justice of the peace for performing a marriage ceremony and making return. It frequently happens that there is tendered to a justice a larger amount than \$1.00, and it has been the custom at all times for the justices to accept such gratuities. Justices White and Orahod have accounted to the city and county for the \$1.00 fee. It has recently been suggested that they are under obligation to account to the city and county for the gratuities just mentioned. Your committee does not think so. The city and county has no right to receive more than the one dollar statutory amount.

The question has also been raised as to whether or not it is a violation of law for a justice of the peace to accept more

than the statutory fee of one dollar for the performance of a marriage ceremony. It will, of course, be admitted by everyone that it would be contrary to public policy to permit a justice of the peace to receive any gratuity for the performance of a judicial duty. The performance of a marriage ceremony, however, has no connection with judicial service, and there would seem to be nothing contrary to general public policy for a justice of the peace to accept a voluntary offering of more than one dollar for such a service. But the matter cannot be left to general reasoning or to a determination on general principles of right and wrong. The question in this instance is determined by the charter of the City and County of Denver, which provides: "No officer \* \* shall receive or accept any fee, compensation or payment, other than his salary as now or hereafter fixed by this charter, or by ordinance, for any work or service performed by him of any official nature, or under color of office, \* \* ."

The committee, however, is not unanimous on the question as to the foregoing provision of the charter applying to the gratuities hereinbefore mentioned.

13. Litigation in the justice courts has increased enormously since 1920. Taking the data in the Denver Bar Association Docket of March, 1927, and comparing it with the records of 1931, we find the following figures:

	Criminal Cases	Civil Cases
1920, Justice Rice .....	458	1272
1931, Justice White .....	913	3765
1931, Justice Orahood .....	771	4507

(These are the total number of criminal cases filed, but the number of defendants is much greater, as in many cases there were several defendants.)

For the last two years Justice White has averaged 312 civil cases, and Justice Orahood 378 civil cases a month. Criminal cases are filed in each court by alternate months, this system having been inaugurated when the justices also acted as police magistrates, so as to enable them to spend alternate months in police courts in the morning.

These figures, and the experience of the Bar, conclusively demonstrate that the justices are very much overworked. The 1904 charter, when Denver's population was about 140,000, provided for three justices; now with almost 300,000 people

and more than three times as much business, there are only two justices.

Eight hours work is the regular working day for city employes. Yet neither justices nor constables, under the charter, are entitled to extra fees for night work. Justices are called from their sleep to make bonds, and constables must make many of their seizures in attachments, especially of automobiles, between 6:00 P. M. and midnight. Such a system is wrong.

#### CONCLUSIONS

The acts of the justices complained of in this case seem to have been done through a mistaken view of the law, or in ignorance of what should have been done. To a considerable extent they simply followed illegal practices already established when they took office. They made no attempt, so far as the committee can learn, to conceal in any way the charges which they were making for services, nor the fact that certain fees and charges were retained by them as compensation in addition to their salaries. In other words, there has been no attempt to conceal what has been done. In a large measure, or to some extent, at least, what has been done has been with the approval, either directly or tacitly given, of public officials of the city and county of Denver. No objection has been made until recently by any members of the Denver bar to the charges collected by the justices. Justices Orahoad and White have both borne a good reputation, and it is the consensus of opinion of the bar that in their judicial decisions they have acted ably, impartially and without fear or favor. It is to their credit that they have voluntarily resigned from their official positions. We believe that the justices are honest in the statement made in their letters of resignation, viz: "We know that we will be believed by the bar when we say that we have not collected any fee or retained any fee to which we did not honestly believe we were justly entitled."

Your committee deems it proper to add to its report, however, that any system whereby justices receive fees in addition to compensation allowed by law must be condemned in no uncertain terms, and that the taking of illegal fees by judges can under no condition be condoned. Fees of clerks and con-

stables should, of course, be limited to compensation allowed by law.

#### RECOMMENDATIONS

1. The committee is of the opinion that the Colorado statutory fee bill should be strictly complied with until it is changed by law. This conclusion is reached entirely regardless of the additional work and expense which may be involved in complying with that method, or the difficulty in auditing the accounts. The practice of the justices retaining any fees should be at once abandoned. The fees collected for the city and county should be turned over monthly to the county treasury. The eighty-cent garnishment fee should be deposited by the justice in a trust account for payment to the garnishee, until the law makes provision for further disposition of such funds. No charge for service performed at any time should be in excess of the legal charge.

2. A law should be enacted revising the present fee bill, which was established over forty years ago. The new law should provide for a deposit to be made in advance to cover fees, and a return of unearned fees, or else a reasonable and definite amount should be required to be paid in advance to cover all fees to be charged by the justice. The committee recommends the latter plan.

The schedule of all fees that can be charged should be posted in each of the justice's courts.

3. Unquestionably the compensation of the justices of the peace should be increased by an amendment to the charter. \$2,000.00 a year is absolutely inadequate. The committee recommends that the salaries be increased to \$3,000.00 per year.

4. The number of justices should be flexible to conform to the needs of Denver, and the number thereof should be fixed by ordinance of the city council, and not by the charter. We need at least three justices at the present time, in addition to the police magistrate.

5. The present charter provision by which the mayor is required to appoint the justices of the peace is fundamentally unsound. The justices should be elected by the voters, and should appoint their own clerks and constables, and have complete control over all subordinate officers and employees. The

administrative work of the justice courts should be consolidated so that justices may sit for each other, and so that there will be one clerk's office and one chief constable, with sufficient deputy clerks and constables to furnish one of each for regular night assignment.

6. The committee further recommends that the Bar Association either continue this committee or appoint a new committee to draft the necessary revisions in the state constitution, statute, charter or ordinances to carry into effect the foregoing recommendations.

Respectfully submitted,

HORACE N. HAWKINS.  
ERNEST L. RHOADS.  
PHILIP S. VAN CISE.  
WILBUR F. DENIOUS.  
IRA C. ROTHGERBER.

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## A BETTER BAR OUTING

A large attendance is expected at the Fifth Annual Bar Outing to be held June 16 at Mount Vernon Country Club, because of the following changes in this year's program:

Six good prizes will be given in each event.

The Championship contest between the two winners of the Judges' horseshoe tournament and the two winners of the lawyers' and guests' horseshoe tournament should be at least interesting, if not amusing.

THE SOLITAIRE COWBOYS of Radio Fame will entertain during dinner and following dinner, in place of the vaudeville shows heretofore held.

The program will conclude promptly at 9 P. M., following which the members and guests will be allowed to arrange their own games, implements for which will be provided.

WE HAVE WORKED ALL WINTER.  
COME AND PLAY.

CHAS. J. MUNZ, JR., *Chairman,*  
*Bar Outing Committee.*