



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

August 10, 1953

Hon. William H. Scott  
Criminal District Attorney  
Civil Courts Building  
Houston 2, Texas

Letter Opinion No. MS-80

Re: Construction of House Bill  
495 of the 53rd Legislature  
(Small Claims Court).

Dear Mr. Scott:

You have requested an opinion on the construction of House Bill 495, Acts of the 53rd Legislature, 1953, Chapter 309, Page 778, codified as Article 2460a, Vernon's Civil Statutes, which creates "Small Claims Courts." Your questions are as follows:

"1. Must separate docket records be kept for all suits filed in the Small Claims Court?

"2. Does the two dollar (\$2.00) 'filing fee' provided for by Section Five of the Small Claims Court Act cover all docketing cost, issuance of citations and service of citations, or will the sheriff or Constable be entitled to additional fees for the service of such citations and who shall collect them and when shall they be collected?

"3. Section Four of the Act provides that the claimant must appear before the Judge of the Small Claims Court and file a statement of his claim under oath. Does this mean that no other Notary Public may take the oath of the claimant?

"4. Does Section Two of the Act listing those actions that are not eligible for litigation in the Small Claims Court prohibit large corporations with numerous small claims from litigating in the Small Claims Court?"

It was held in Attorney General's Opinion S-83 (1953) copy of which is enclosed, that the Small Claims Court is a new court created by the Legislature and the only fees that may be charged for litigation in such court are the \$2.00 filing fee and a \$3.00 jury fee if either party desires a trial by jury. Therefore, in answer to your first and second questions you are advised that separate dockets must be kept for all suits filed in the Small Claims Court and that the \$2.00 filing fee covers all docketing costs, issuance and service of citations.

Section 4 of Article 2460a provides:

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"Actions shall be commenced under the provisions of this Act whenever the claimant, or the personal representative of a deceased claimant, appears before the judge of the Small Claims Court and files a statement of his claim under oath. Such statements shall be in substantially the following form:

"In the Small Claims Court of \_\_\_\_\_ County, Texas  
"A.B., Plaintiff

vs.

C.D., Defendant  
State of Texas     )  
County of \_\_\_\_\_ )

". . .

"Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Judge."

Compliance with the provisions of Section 4 is a necessary element to confer jurisdiction upon the Small Claims Court. It requires the claimant or the personal representative of a deceased claimant to appear before the judge and file a statement of his claim under oath. The form provided is subscribed and sworn before the Judge of the Small Claims Court. A statement of the claim subscribed and sworn to before some person other than the Judge of the Small Claims Court will not satisfy the jurisdictional requirements of Section 4.

Section 2 of Article 2460a provides:

"The Small Claims Court shall have and exercise concurrent jurisdiction with the Justice of the Peace Court in all actions for the recovery of money only where the amount involved, exclusive of costs, does not exceed the sum of Fifty Dollars (\$50), except that when the claim is for wages or salary earned, or for work or labor performed under any contract of employment, the jurisdictional amount, exclusive of costs, shall not exceed One Hundred Dollars (\$100). Provided, however, that no action may be brought in the Small Claims Court by any assignee of such action or upon any assigned claim nor by any person, firm, partnership, association or corporation engaged, either primarily or secondarily, in the business of lending money at interest, nor by any collection agency or collection agent. Provided, further, however, that nothing in this Act shall prevent the bringing of any action by a legal heir or heirs on any account or claim otherwise within the jurisdiction of these Courts."

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Section 2 does not prohibit corporations, other than those engaged in lending money at interest, from litigating in the Small Claims Court provided that the action is not upon any assigned claim nor by any collection agency or collection agent, and provided that the claims of the corporations do not exceed the jurisdictional amounts.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By  
John Reeves  
Assistant

JR:da:hep