



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

May 12, 1966

Honorable Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Opinion No. C-680

Re: Under Art. 35.27,
Vernon's Code of
Criminal Procedure,
when no funds have
been appropriated for
witness fees, what
will constitute a
filing with the Comp-
troller of a claim
for witness fees and
related questions.

Dear Sir:

You recently requested an opinion of this office concerning an interpretation of Attorney General's Opinion Number C-637 (1966), wherein this office held that witness fee bills must be filed with the Comptroller of Public Accounts within 12 months from the due and payable date. Concerning the same you ask the following questions:

"Please advise me as to what is necessary in this instance to constitute a filing by the witness. If the witness fee bill is submitted to this department and received by this department and docketed and then returned to the witness or his assignee, would this constitute a filing of the fee bill? And if so, could the witness fee bill be legally paid if money were appropriated at a much later date, or at least more than twelve months elapses between the filing of the fee bill and the time that an appropriation be made for its payment? Or, should this department maintain such fee bills on file in this department?"

It is the opinion of this office that a witness fee bill is filed when the same reaches the office of the Comptroller of Public Accounts for the purpose of being filed. It is a well-established rule in this State

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that an instrument is considered to be filed when it is placed in the hands of the proper officer for such purpose. Thomas v. Farris, 132 S.W.2d 435 (Tex.Civ.App. 1939, error dism. judgm. cor.), Civil Service Commission of City of Lufkin v. Crager, 384 S.W.2d 381 (Tex.Civ.App. 1964, error ref. n.r.e.)

Therefore, when a witness fee bill is submitted to the Department of the Comptroller of Public Accounts and received by the Comptroller of Public Accounts and docketed and then returned to the witness or his assignee, the same would constitute a filing. Whether it would be advisable to maintain such witness fee bills on file in the office of the Comptroller of Public Accounts, is an administrative matter, to be determined by your office.

The second portion of your question concerns whether or not a witness fee bill can be legally paid if the money to pay the same were appropriated more than twelve months after the filing of the witness fee bill. It is the opinion of this office that the State of Texas is obligated to pay witness fees when the same are filed within twelve months of the due and payable date with the Comptroller of Public Accounts. The date upon which the appropriation is made does not affect the obligation.

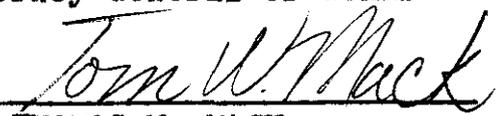
SUMMARY

A witness fee bill is considered as being filed when it reaches the office of the Comptroller of Public Accounts for that purpose.

Witness fees can be legally paid even though the money to pay the same is appropriated more than twelve months after the witness fee bill is filed with the Comptroller of Public Accounts.

Yours very truly,

WAGGONER CARR
Attorney General of Texas

By: 

THOMAS W. MACK
Assistant Attorney General

TWM/er

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APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman
Douglas Chilton
Pat Bailey
Gilbert Pena
Robert Norris

APPROVED FOR THE ATTORNEY GENERAL
By: T. B. Wright