



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

September 18, 1967

Honorable Michael D. Earney
County Attorney
Ector County Courthouse
Odessa, Texas 79760

Opinion No. M-135

Re: Validity of certain provisions of House Bill 78, Acts of the 60th Legislature, Regular Session, 1967, Chapter 680, Page 1785 (relating to fees of county clerks and clerks of county courts) which purport to repeal certain fees for attorneys and physicians under court appointment in certain cases.

Dear Mr. Earney:

You have requested our opinion as to whether the provisions of Subparagraph (a) (v) of Subsection B of Section 1 of Article 3930b, Revised Civil Statutes of Texas, 1925, as added by the provisions of House Bill 78, Acts of the 60th Legislature, Regular Session, 1967, Chapter 680, Page 1785 at Page 1786, are in violation of the provisions of Section 35 of Article III of the Constitution of Texas.

House Bill 78 is an act amending Title 61, Revised Civil Statutes of Texas, 1925, by adding Article 3930b relating to fees of county clerks and clerks of county courts.

Section 35 of Article III of the Constitution of Texas provides in part as follows:

"No bill * * * shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof, as shall not be so expressed."

Subparagraph (a) (v) of Subsection B of Section 1 of Article 3930b, Revised Civil Statutes of Texas, 1925, as added by the provisions of House Bill 78, reads as follows:

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"(v) For mentally ill: Total costs for all services listed in Article 5547-13, Article 5547-14 and Article 5547-15, Vernon's Civil Statutes of Texas, shall be in the amount of. . . . \$40.00."

Section 2 of House Bill 78 provides:

"All laws or parts of laws in conflict with the provisions of this Act are hereby repealed to the extent of conflict only, including but not limited to Article 3930a, Revised Civil Statutes of Texas, 1925; and Sections 13, 14 and 15, Chapter 243, Acts of the 55th Legislature, Regular Session, 1957 (Articles 5547-13, 5547-14, and 5547-15, Vernon's Texas Civil Statutes)."

The title to House Bill 78 provides:

"An Act to amend Title 61, Revised Civil Statutes of Texas, 1925, by adding Article 3930(b), relating to fees which county clerks and clerks of county courts shall receive for their services; containing a repealing clause repealing all laws and parts of laws in conflict, to the extent of conflict only, with the provisions of this Act; containing a saving clause; and declaring an emergency."

Thus, the title to House Bill 78 states that the bill relates to fees which county clerks and clerks of county courts all receive for their services. It makes no mention of setting court costs for mentally ill cases and gives no notice in the title that it will attempt to remove from the discretion of the Court, under Article 5547-15, Vernon's Civil Statutes, authority for the court to allow reasonable compensation to attorneys and physicians appointed by it under the Mental Health Code. The discretion of the Court and the costs of Court for mental illness proceedings are nowhere mentioned in the title, nor does the title reasonably cause one to foresee such an attempt as the subject of the bill.

Article 5547-13 reads as follows:

"Upon the request of the county judge, the county attorney or the district attorney in counties having no county attorney shall represent the State in commitment hearings under this Code."

Article 5547-14, reads as follows:

"(a) The county of legal residence of the patient shall pay the costs of Temporary Hospitalization, Indefinite Commitment and Re-examination and Hearing proceedings, including attorneys' fees and physicians' examination fees, and expenses of transportation to a State mental hospital or to an agency of the United States.

"(b) For the amounts of these costs actually paid, the county is entitled to reimbursement by the patient or any person or estate liable for his support in a State hospital.

"(c) Unless the patient or someone responsible for him is able to do so, the State shall pay the cost of transportation home of a discharged patient and the return of a patient absent without authority.

"(d) Neither the county nor the State shall pay any costs for a patient committed to a private hospital."

Article 5547-15 reads as follows:

"The county judge may allow reasonable compensation to attorneys and physicians appointed by him under this Code. The compensation paid shall be taxed as costs in the case."

Neither Articles 5547-13, 5547-14, nor 5547-15 concern "fees which county clerks and clerks of county courts shall receive for their services".

In construing the provisions of Section 35 of Article III of the Constitution of Texas, the Supreme Court of Texas has stated on numerous occasions that the caption of an amending act is not necessarily deficient because it merely states that a particular prior law or particular section thereof is being amended and does not give further particulars. State v. McCracken, 42 Tex. 383 (1875); Gunter v. Texas Land & Mortgage Co., 82 Tex. 496, 17 S.W. 840 (1891); English & Scottish-American Mortgage & Investment Co., Ltd. v. Hardy, 93 Tex. 289, 55 S.W. 169 (1900); Board of Water Engineers v. City of San Antonio, 155 Tex. 111, 283 S.W.2d 722 (1955); Schlichting v. Texas State Board of Medical Examiners, 310 S.W.2d 557 (Sup.Ct. 1958).

This rule, however, has its limits. The Court

stated in Board of Water Engineers v. City of San Antonio, supra:

" . . .if the provisions of the law or section to be amended involve a subject different from that actually dealt with in the body of the amending act, a reading of the former will not disclose to the reader the true subject of the amending act but, on the contrary, will mislead him as to the latter. . ."

Therefore, the Court noted in footnote 3 at 283 S.W.2d, page 727, the following:

"The courts of this state have held that a reference to a number of an article in a code, such as our Revised Statutes, is sufficient in the title of an act amendatory thereof, to allow any amendment germane to the subject treated in the article referred to. English & Scottish-American Mortgage & Investment Co. v. Hardy, 93 Tex. 289, 55 S.W. 169; State v. McCracken, 42 Tex.[383] 384. The reason for the holding appears to be that the naming of the article to be amended directs attention to all of the provisions therein, as the subject of the amending act, and that such provisions can be ascertained by reading the article to be amended. However, when the Legislature restricts the title of an amendatory act by reference to the number in the code of the article amended, and announces its purpose to deal with the original bill in respect to particular matters therein, it is bound to govern itself accordingly, and keep within what it had itself declared would be the limits of its proposed action. Sutherland Statutory Construction (2d Ed.), vol. 1, § 139; State v. American Sugar Refining Co., 106 La. 553, 31 So. 181, 186."

Likewise it was held in Harris County Fresh Water Supply District No. 55 v. Carr, 372 S.W.2d 523 (Sup.Ct. 1963):

"The deceptive feature of the title is thus apparent. A reader is misled into believing that the bill will have no application to any type of water district except the two which are specified in the title, and that the purpose of the Act is to establish restrictions with respect to these two types of districts. But the intended effect

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of the Act is to prohibit the creation of any type of water district other than the two mentioned. . . ."

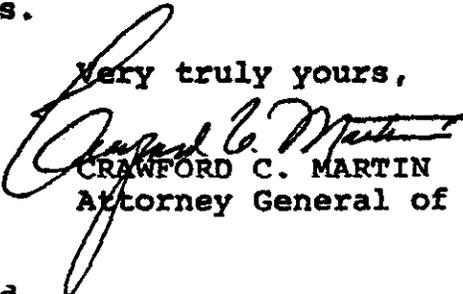
See also Ward Cattle & Pasture Co. v. Carpenter, 109 Tex. 103, 200 S.W. 521 (1918); Gulf Insurance Co. v. James, 143 Tex. 424, 185 S.W.2d 966 (1945); Feagin v. State, 310 S.W.2d 99 (Tex. Crim., 1958).

In view of the foregoing you are advised that the provisions of House Bill 78 purporting to repeal the provisions of Articles 5547-13, 5547-14 and 5547-15, Vernon's Civil Statutes, and purporting to fix costs for all services listed therein are in violation of the provisions of Section 35 of Article III of the Constitution of Texas.

S U M M A R Y

House Bill 78, Acts of the 60th Legislature, Regular Session, 1967, Chapter 680, Page 1785, is an act amending Title 61 of the Revised Civil Statutes of Texas, 1925, by adding Article 3930b so as to provide certain fees which county clerks and clerks of county courts shall receive for their services. The provisions of House Bill 78 which purport to repeal the provisions of Articles 5547-13, 5547-14 and 5547-15, Vernon's Civil Statutes (relating to fees of attorneys and physicians in certain cases) are in violation of the provisions of Section 35 of Article III of the Constitution of Texas, since the title to House Bill 78 gave no notice of an attempt to repeal or amend such Articles.

Very truly yours,


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APPROVED:
OPINION COMMITTEE

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