



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

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October 18, 1967

Honorable Burton G. Hackney
Commissioner, State Department
of Public Welfare
John H. Reagan Bldg.
Austin, Texas 78701

Opinion No. M-148

Re: Whether House Bills Nos. 78 and 80, 60th Legislature, 1967, have the effect of repealing Section 246, Texas Probate Code, so as to preclude a court from ordering that no costs or fees be charged needy persons in guardianship proceedings; and related constitutional questions.

Dear Mr. Hackney:

You have requested the opinion of this office regarding the subject question.

Section 246, Texas Probate Code, is quoted as follows:

"Whenever a guardian is appointed for the purpose of enabling a person to receive public assistance which is contingent upon need, from the State or Federal Government, the court may, in its discretion, order that no costs or fees be charged in connection with the proceeding."

Based upon the above statute, your letter of request is quoted, in part, as follows:

"The Probate Courts in most of the Counties in the State of Texas have been waiving the Court costs in guardianship proceedings for the needy aged, blind, disabled, and families with dependent children whenever it was necessary to have a guardian appointed in order that such individuals could receive their Public Assistance grants. In most instances, the recipients are completely without funds or are living on a very low-income level and depending primarily upon their assistance grants for support.

"Although the State Department of Public Welfare does not actually file the petitions for guardianships, the Department is involved because it cannot make assistance payments to an individual who is incapable of handling his own affairs and endorsing his own checks until a legal guardian has been appointed.

"The Department has received notice that in some of the Counties, guardianship papers on behalf of the indigent recipients of Public Assistance cannot be filed without the payment of Court costs. The Department is without legal authority to pay the Court costs and the recipients, or potential recipients, are not financially able to do so. It is our understanding that the County Clerks are relying upon House Bills No. 78 and No. 80 as their legal

authority for requiring the payment of Court costs.”

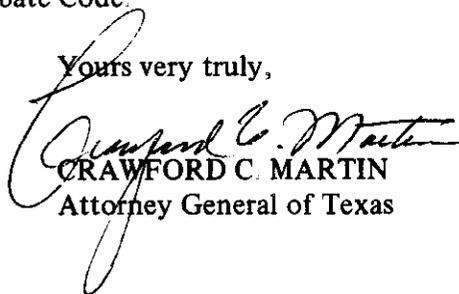
House Bill No. 78, 60th Legislature, Regular Session, 1967, Chapter 680, page 1785 and House Bill No. 80, 60th Legislature, Regular Session, 1967, Chapter 681, page 1789 were enacted as fee bills affecting the amount of fees that must be collected by County Clerks. Both of these enactments purported to repeal a number of specific statutes, plus all others in conflict with the new statutes. It is the view of this office that Section 246, Texas Probate Code, is not affected by the enactment of House Bills 78 and 80, for the reason that these enactments simply provide for the establishment of certain fees collectable by the County Clerk for certain specific acts. Section 246 is not a fee statute, but is an authorization to the County Judge to waive the payment of fees in certain circumstances. A close examination of House Bills 78 and 80 reveals nothing which would lead us to conclude that the Legislature intended to amend or repeal the authority granted to the Court to waive costs or fees in certain circumstances.

In view of the foregoing, your questions regarding the constitutionality of House Bills 78 and 80 need not be answered.

S U M M A R Y

House Bills Nos. 78 and 80, 60th Legislature, 1967, do not repeal or amend Section 246 of the Texas Probate Code.

Yours very truly,



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APPROVED: OPINION COMMITTEE

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