



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**RAWFORD C. MARTIN
ATTORNEY GENERAL**

May 5, 1970

Hon. Martin D. Eichelberger
District Attorney
McLennan County Courthouse
Waco, Texas

Opinion No. M- 624

Re: Disposition of the \$1.00
service charge collected
by county tax assessor-
collectors as authorized
by Article 6675a-11,
Vernon's Civil Statutes.

Dear Mr. Eichelberger:

By recent letter you have requested an opinion from this office in regard to the above stated matter. Accompanying your request, you enclosed a letter from your county auditor, and we quote from the auditor's letter as follows:

"There is some disagreement between the County Auditor and the County Tax Assessor and Collector regarding the proper handling and accounting for a \$1.00 service charge now provided for the handling and mailing of automobile license plates in McLennan County.

"The Tax Assessor-Collector has been collecting the service charge as provided in Article 6675a-11 but has not been reporting such collections to the County Clerk and discharging himself from the accountability by delivering such funds to the County Treasurer and receiving therefor the County Treasurer's receipt. Instead, the Tax Assessor-Collector has been paying these moneys directly to the Postmaster for postage to the extent of the postage incurred in the mailing of automobile license plates, with the unused balance of collections being retained by the Tax Assessor-Collector for disposition at some later date."

"1. Is it permissible for the County Tax Assessor-Collector to spend these funds for postage by a method which excludes the approval of the County Auditor and the Commissioners Court as well

as the signature of the County Treasurer and the County Clerk and the counter-signature of the County Auditor which is normally required on other payments by the county?

"2. Is the Tax Assessor-Collector required to report service charges to the County Clerk and deliver the moneys to the County Treasurer for deposit in the County Treasury?

"3. If Question One is answered in the affirmative, is it within the scope and authority of the County Auditor to require that such funds be deposited in the County Treasury and warrants be drawn on the County Treasurer for the payment of the postage and handling in connection with the mailing of auto license plates if he deems it necessary to the proper checking and accounting of these fees?"

Your question necessitates an analysis of Article 6675a-11, Vernon's Civil Statutes, which was amended by the Texas Legislature in 1969.

Article 6675a-11 is quoted as follows:

"As compensation for his services under the provisions of this and other laws relating to the registration of vehicles, each County Tax Assessor-Collector shall receive a uniform fee of sixty-five Cents (65¢) for each of the first five thousand (5,000) receipts issued by him each year pursuant to said laws; he shall receive a uniform fee of Fifty-five cents (55¢) for each of the next ten thousand (10,000) receipts so issued, and a uniform fee of Fifty Cents (50¢) for each of the balance of said receipts so issued during the year. Said compensation shall be deducted weekly by each County Tax Assessor-Collector from the gross collection made pursuant to this Act and other laws relating to registration of vehicles. Out of the compensation so allowed the County Tax Assessors-Collectors, it is hereby expressly provided and required that they shall pay the entire expense of issuing all license receipts and license plates issued pursuant hereto. It is further provided that the County Tax Assessors-Collectors may collect an additional service charge of One Dollar (\$1.00) from each

applicant desiring to register or reregister by mail. This service charge shall be used to cover the cost of handling and postage to mail the registration receipt and insignia to the applicant. The Highway Department may issue and promulgate procedures to cover the timely application for and issuance of registration receipts and insignia by mail. (Emphasis added.)

The above quoted Article represents an amendment of Article 6675a-11 by House Bill 768, Acts of the 61st Legislature, 1969, pages 1657 and 1658.

Section 4 of said House Bill reads as follows:

"The fact that the number of motor vehicle registrations made by the County Tax Assessors-Collectors has steadily increased, and the fact that labor and material costs and other administrative expenses which are necessary in the issuance of such registrations have materially increased, and the fact that there has been no increase in the fees allowed Tax Assessors-Collectors for performing this service . . ." (Emphasis added.)

Section 4 indicates a general intent on the part of the Legislature to increase the fees of the Tax Assessors and Collectors to meet the ever rising costs of issuing license plates over the counter or through the mail.

The percentage fee authorized to be collected was increased by this amendment and the Tax Assessors-Collectors were authorized to collect a \$1.00 "service charge" in addition to the percentage fees to cover costs of mailing the license plates. The collection of "service charge" appears to be discretionary with the Tax Assessors-Collectors since the Legislature provided, "the County Tax Assessors-Collectors may collect an additional service charge. . . .", however, the use of such money is not discretionary since the Legislature further provided:

"This service charge shall be used to cover the cost of handling and postage to mail the registration receipt . . ." (Emphasis added.)

The mere legislative designation of the \$1.00 charge as a "service charge" rather than a "fee" will not control the determination of the character of the charge. Greer v. Hunt County,

Hon. Martin D. Eichelberger, page 4 (M-624)

249 S.W. 831, 832 (Comm.App. 1923, opinion adopted by Sup.Ct.), wherein it was said ". . . that merely calling the compensation a salary or calling it commissions is not necessarily controlling."

Fees are defined as "compensation for particular services rendered at irregular periods, payable at the time the services are rendered." See Wichita County v. Robinson, 155 Tex. 1, 276 S.W.2d 509, 513 (1955).

Article 6675a-11, when read as a whole, evidences an intent to provide for an additional service charge by the county tax assessors-collectors "as compensation for his services." This is clearly distinguishable from his salary compensation.

Article XVI, Section 61 of the Constitution of Texas, provides, in part:

"All district officers in the State of Texas and all county officers in counties having a population of twenty thousand (20,000) or more, according to the then last preceding Federal Census, shall be compensated on a salary basis. . .

"All fees earned by district, county, and precinct officers shall be paid into the county treasury where earned for the account of the proper fund. . ."

The purpose of the above constitutional amendment was to abolish the fee system of compensating the officers named and to place them on a salary basis, and consequently as to all officers on a salary basis all types of fees of office other than salary would become payable to the treasury out of which salaries are paid. Wichita County v. Robinson, supra; Banks Administrator v. State of Texas, 362 S.W.2d 154 (Tex.Civ.App. 1962, error ref.). State v. Glass, 170 S.W.2d 470 (Tex.Civ.App. 1943, error ref., 167 S.W.2d 296); Settegast v. Harris County, 159 S.W.2d 543 (Tex.Civ.App. 1942, error ref.).

It is our opinion that the service charge type of fee must be handled in the same manner as the other fees collected by the Tax Assessor-Collector pursuant to Article 6675a-11. Such fees must be deducted weekly and deposited in the proper fund of the county. See Attorney General Opinion No. 0-5453 (1943) dealing with the procedure for handling certificate of title fees.

In our construction of Article 6675a-11, we must give effect to the rule that where a statute is subject to two

Hon. Martin D. Eichelberger, page 5 (M-624)

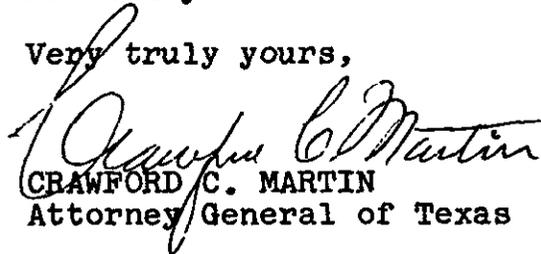
constructions, one of which would favor the claim that the charge in question is a fee to be placed in the treasury and the other to the contrary, the former construction must be adopted. Modden v. Hardy, 92 Tex. 613, 50 S.W. 926, 928 (1899); Allen v. Davis, 333 S.W.2d 441, 444 (Tex.Civ.App. 1960, no writ); Eastland County v. Hagel, 288 S.W. 518 (Tex.Civ.App. 1926, error ref.).

In the light of the above discussion and conclusions, we would answer your first question "No", and your second question "Yes", and in light of our answer to your first two questions we believe the third question to be moot.

S U M M A R Y

Article 6675a-11 as amended in 1969 authorizes an increase in fees for the Tax Assessor-Collector including a \$1.00 service charge for handling mail-in orders. Such fees including the \$1.00 fee must be weekly deducted from the gross sales and accounted for as a fee of office and deposited in the proper county fund, and the expenses incurred paid as are the other expenses of the county.

Very truly yours,


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