



The Attorney General of Texas

April 16, 1981

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Honorable David G. Lewis
Sherman County Attorney
P. O. Box 986
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Opinion No. MW-325

Re: Payment of filing fees and
court costs

Dear Mr. Lewis:

You have asked two questions regarding the collection of fees by public officials in your county. Your first question concerns article 3930a-1, V.T.C.S., which reads in pertinent part:

(1) In addition to the fees authorized and required by Article 3930 of this title, as amended, county clerks and county recorders are authorized and required to collect the fees specified by this article for services rendered by them to all persons, firms, corporations, legal entities, governmental agencies, and governmental representatives. Unless otherwise specified, each fee shall be collected at the time the service is rendered. (Emphasis added).

You ask whether the county clerk is required to follow the mandatory language of this provision and insist on payment of the filing fees at the time of presentment for filing without incurring civil liability. It is suggested that the clerk might be liable in damages if a subsequent lien were filed and recorded in the county after the clerk received a deed of trust but before he recorded it due to non-payment of filing fees.

Ordinarily, the duties of the clerk of the court are purely ministerial. Benge v. Foster, 47 S.W. 2d 862 (Tex. Civ. App. - Amarillo 1932, writ ref'd). The duty described in article 3930a-1, V.T.C.S., is such a ministerial duty. The courts will not hold the clerk liable for damages resulting in part from his performance of his statutory duty. See Harris County v. Wilkinson, 507 S.W. 2d 848 (Tex. Civ. App. - Houston [14th Dist.] 1947, writ ref'd n.r.e.). See also Burleson v. Shaw, 516 S.W. 2d 687 (Tex. Civ. App. - Eastland 1974, writ ref'd). We believe the clerk must comply with the article 3930a-1 requirement of timely payment and he may not be held liable in damages for performance of his statutory duty.

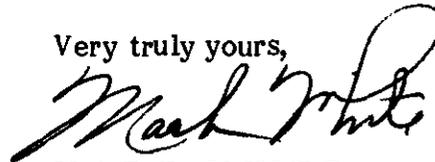
You next ask whether a justice of the peace may assess and collect court costs against state, county, city, school and hospital district taxing

authorities in delinquent tax suits. Article 7297, V.T.C.S., exempts the state and county from costs in delinquent tax suits. Article 7343, V.T.C.S., extends the same advantage to cities and school districts. Costs arising out of tax collection suits may not be assessed against school districts, El Campo Independent School District v. Kimmey, 571 S.W. 2d 865 (Tex. 1978), or a city or county, County of Dallas v. Yellow Cab Co., 573 S.W. 2d 44 (Tex. Civ. App. - Eastland 1978, writ ref'd n.r.e.). However, we find no statute exempting hospital districts from payment of such costs. Thus, we believe court costs may be collected from hospital districts in delinquent tax suits.

S U M M A R Y

The county clerk is required to follow the mandatory language of article 3930a-1, V.T.C.S., and will not incur civil liability for doing so. A justice of the peace may not assess and collect court costs against the state, county, city or school taxing authorities in delinquent tax suits. He may assess and collect such costs against the hospital district taxing authority.

Very truly yours,



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