



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 28, 1992

Honorable Robert T. Jarvis  
Grayson County Attorney  
Grayson County Justice Center  
Sherman, Texas 75090

Letter Opinion No. 92-55

Re: Disposition of fees for services  
performed by peace officers in mis-  
demeanor cases (RQ-42)

Honorable Michael J. Guarino  
Criminal District Attorney  
Galveston County  
405 County Courthouse  
Galveston, Texas 77550

Gentlemen:

You both ask about the disposition of fees assessed upon conviction of misdemeanants and paid by those individuals under article 102.011, Code of Criminal Procedure. The questions involve a peace officer of one jurisdiction performing services for which that provision prescribes fees on behalf of a different political subdivision. The principal concern is the allocation of fees when a municipal police officer executes an arrest warrant in cases filed in county courts.

The fees prescribed in article 102.011 are to be paid by the defendant "for services performed in the case by a peace officer." Code Crim. Proc., art. 102.011(a); *see also id.* art. 2.12 (definition of peace officer includes sheriffs and police officers of incorporated cities, *inter alia*). The fees are assessed upon conviction. *Id.* art. 102.011(e). Thus, there remains the question of how fees collected on behalf of a different jurisdiction are to be remitted to the proper law enforcement agency. The 72d legislature amended article 102.011 of the Code of Criminal Procedure to clarify the law in regard to the collection and disposition of fees prescribed by that provision. Acts 1991, 72d Leg., ch. 575, at 2055. Article 102.011(a), as amended, reads in pertinent part as follows:

(a) A defendant convicted of a misdemeanor shall pay the following fees for services performed in the case by a peace officer:

....

(2) \$35 for executing or processing an issued arrest warrant or *capias*, with the fee imposed for the services of:

(A) the law enforcement agency that executed the arrest warrant or *capias*, if the agency requests of the court, not later than the 15th day after the date of the execution of the arrest warrant or *capias*, the imposition of the fee on conviction; or

(B) the law enforcement agency that processed the arrest warrant or *capias*, if the executing law enforcement agency failed to request the fee within the period required by Paragraph (A) of this subdivision.

Code Crim. Proc. art. 102.011(a).

The 1991 amendment to article 102.011 clarifies the allocation of fees in cases where the law enforcement agency executing the arrest warrant or *capias* is not the agency that originally filed or processed the instrument. In such cases, the executing agency must request payment of the fee from the court hearing the case<sup>1</sup> within 15 days of the date of execution. If the executing agency fails to request the fee within that time, the law enforcement agency that processed the warrant or *capias* is entitled to the fee.

We believe the 1991 amendment makes clear that the fee for serving an arrest warrant or *capias* is not limited to state and county law enforcement agencies. Section 102.011 does not by its terms limit itself to such agencies, and we do not believe such a limitation can reasonably be inferred from the language of the section. Furthermore, the 1991 amendment allows the fee under paragraph (a)(2) to be paid to the "the law enforcement agency that executed the arrest warrant or *capias*." *Id.* (a)(2)(A). The provision by its plain terms thus allows any law enforcement agency deriving its authority from the state to be compensated for executing an arrest warrant or *capias*.<sup>2</sup>

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<sup>1</sup>Although section 102.011 does not specify, we assume that the claim for a fee under this provision must necessarily be submitted to the court hearing the case, since it is the defendant who must pay the fee after conviction.

<sup>2</sup>The amendment also answers Mr. Guarino's secondary question about whether the \$35 fee prescribed in article 102.011(a)(2) for "executing or processing an issued arrest warrant or *capias*" might involve two separate fees assessed against the defendant, one for executing and another for processing the warrant. The 1991 amendment to section 102.011 makes it clear that, while executing and processing are two different functions, only one fee is allowed.

Mr. Guarino also asks how it is determined which agency is entitled to the fee. The amendment to section 102.011 resolves this question by making clear that it is the obligation of the executing agency to timely submit its request to the court. He also asks whether the sheriff's department may bill other counties or municipalities for the fee when the sheriff's department executes a warrant or *capias* originally processed by another law enforcement agency. Again, the recent amendment to section 102.011 resolves this concern by requiring the executing agency to file its claim for a fee with the court hearing the case.

While chapter 102 itemizes various fees to be paid by criminal defendants, chapter 103 details recordkeeping, collection, and disposition requirements related to those fees. Upon performing the service, article 103.001 requires the officer who performed the service or the officer who is entitled to receive payment to file his bill with the court that will collect the cost if the defendant is convicted. Article 103.004 recognizes that one county might collect fees that properly belong to a different county and requires that the money be paid immediately. Article 103.005 requires that officers who collect the fees report to the commissioners court or district court the collection and the distribution of the funds. Article 103.009 requires clerks of courts to maintain fee books identifying *inter alia* the fee, the number and style of the action, and the name of the person who is entitled to receive the fee. Article 103.010 details the information that is required on receipts given for fees paid, and article 103.011 requires the county auditor to examine receipt books monthly and "determine whether the money collected has been properly disposed of."

While article 103.004 requires that the officer who collects fees immediately pay them to the treasurer of the county for which the money was collected, we find no provision in either the Code of Criminal Procedure or the Local Government Code prescribing procedures to be followed when such fees are to be paid to municipalities. Municipal charter or ordinance provisions may supply such procedures which would govern in the absence of controlling state law.

## S U M M A R Y

Under article 102.011 of the Code of Criminal Procedure, the fee paid for the services of a peace officer who executes an arrest warrant or *capias* are to be paid to the agency that employs the officer who performed the service provided the executing agency submits a claim for the fee to the court hearing the case within 15 days of the date the warrant or *capias* is executed. Municipalities are entitled to the fee for a warrant or

**capias executed by a municipal police officer. Either the officer or his employing agency must submit a bill for his services to the court having jurisdiction of the case.**

Yours very truly,

A handwritten signature in black ink, appearing to read "Steve Aragón", with a stylized flourish at the end.

**Steve Aragón  
Assistant Attorney General  
Opinion Committee**