



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 14, 1993

Honorable Joe F. Grubbs  
Ellis County and District Attorney  
Ellis County Courthouse  
Waxahachie, Texas 75165-3759

Letter Opinion No. 93-89

Re: Authority of a district clerk to impose  
certain fees in a proceeding for the forfeiture  
of contraband (ID# 20522)

Dear Mr. Grubbs:

You advise that pursuant to article 59.04(b) of the Code of Criminal Procedure, the county attorney initiates forfeiture proceedings with the District Clerk of Ellis County seeking to forfeit contraband on behalf of law enforcement agencies. You ask whether the district clerk may require payment for costs of court to:

- (a) file a Forfeiture of Contraband proceeding,
- (b) prepare citations for service in such proceeding,
- (c) provide certified copies of judgments or other papers in the case,
- (d) issue abstracts of judgment resulting from such case, or
- (e) provide any and all other services in such proceeding normally necessary in the litigation of a civil lawsuit.

We conclude that the clerk lacks authority to require the county to make such a payment. *See* Attorney General Opinion JM-779 (1987).

In JM-779, this office addressed the question of whether a district attorney is required to reimburse a county clerk for services rendered pursuant to a bond forfeiture proceeding. It was concluded that although section 51.318 of the Local Government Code authorizes the county clerk to charge a fee for services rendered pursuant to such a proceeding, that fee may not be collected from a district attorney's office. *Id.* at 2. Similarly in Attorney General Opinion M-168 (1967), this office concluded that "neither the State nor any county may be charged such [filing] fees" in cases where the county officer is compensated on a salary basis. Both Attorney General Opinions JM-779 and M-168 are predicated upon section 3, article 3912e, V.T.C.S., which has been repealed and replaced, effective September 1, 1987, with chapter 154 of the Local Government Code. *See* Acts 1987, 70th Leg., ch. 149, §§ 1, 49.

Section 154.004 of the Local Government Code provides as follows:

(a) The state may not pay a district officer a fee or commission for the performance of a service by the officer.

(b) If a county officer is paid an annual salary, the state or any county may not pay a fee or commission to the officer for the performance of a service by the officer.

Accordingly, we conclude that the district clerk may not require payment of costs of court from the county.

**S U M M A R Y**

The district clerk lacks authority to require the county to pay costs of court.

Yours very truly,



Toya Cirica Cook  
Assistant Attorney General  
Opinion Committee