



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 19, 1994

Honorable John Sharp  
Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

Letter Opinion No. 94-048

Honorable Tracey Bright  
Ector County Attorney  
Ector County Courthouse, Room 218  
Odessa, Texas 79761

Re: Whether section 51.702 of the Government Code requires a participating county commissioners court to adopt a new resolution annually to continue participating in the program and related questions (ID#s 24827, 22252)

Dear Comptroller Sharp and Ms. Bright:

Both of you have asked questions related to section 51.702 of the Government Code. Section 51.702 of the Government Code provides in pertinent part as follows:

(a) Except as provided by Subsection (g), in addition to all other fees authorized or required by other law, the clerk of a statutory county court<sup>1</sup> shall collect a \$20 filing fee in each civil case filed in the court to be used for court-related purposes for the support of the judiciary.

(b) In addition to other court costs, a person shall pay \$10 as a court cost on conviction of any criminal offense in a statutory county court, including cases in which probation or deferred adjudication is granted. . . .

(c) Court costs and fees due under this section shall be collected in the same manner as other fees, fines, or costs are collected in the case.

(d) The clerk shall send the fees and costs collected under this section to the comptroller at least as frequently as monthly. The comptroller shall deposit the fees in the judicial fund.

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<sup>1</sup>For purposes of title 2 of the Government Code, of which the sections we discuss in this letter are a part, a "statutory county court" is in relevant part "a county court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, county criminal courts, county criminal courts of appeals, and county civil courts at law." Gov't Code § 21.009(2).

(f) This section applies only to fees and costs for a 12-month period beginning July 1 in a county in which the commissioners court:

(1) adopts a resolution authorizing the fees and costs under this section for the 12-month period; and

(2) files the resolution with the comptroller not later than June 1 immediately preceding the 12-month period during which the fees and costs are to be collected. [Footnote added.]

*But see* Attorney General Opinion DM-123 (1992) at 4 (concluding that section 51.702(b), which exacts \$10 dollar court cost upon conviction in criminal case, is constitutionally invalid on due process and equal protection grounds).

Comptroller Sharp's questions require us to interpret section 51.702(f) of the Government Code. The comptroller first asks whether a participating county commissioners court annually must adopt a new resolution to continue participation in the program. Second, the comptroller asks whether a county that desires to participate in the program must file its resolution with the Comptroller's office by June 1 of any given year to be eligible to participate in the program during the succeeding twelve-month period.

In our opinion, subsection (f) is clear on its face; thus, we need not rely on extrinsic materials to determine what the legislature intended the subsection to mean. *See Lumbermen's Underwriters v. State Bd. of Ins.*, 502 S.W.2d 217, 219 (Tex. Civ. App.--Austin 1973, writ ref'd n.r.e.) (citing 53 TEX. JUR. 2D *Statutes* § 125, at 182 n.17) (stating that, when legislature plainly has expressed its intent in language of statute, intent must be effectuated without attempting to construe or interpret law). Under subsection (f), a county may resolve to participate in the program section 51.702 establishes only for a twelve-month period of time--no more and no less--which begins on July 1 of every year. Consequently, if a county desires to continue participating in the program, the commissioners court of that county annually must adopt a resolution authorizing the clerk of the statutory county court to collect the fees and costs section 51.702 authorizes.

Simply adopting such a resolution annually is insufficient to continue participation in the program, however. The plain language of subsection (f)(2) requires the county to file its resolution with the comptroller "not later than June 1 immediately preceding the 12-month period during which" the county will collect fees and costs under section 51.702. If a county fails annually to adopt a resolution authorizing the clerk to collect fees and costs under section 51.702 of the Government Code and to file that resolution with the comptroller by the date specified in section 51.702(f)(2), the county will discontinue its participation in the program for the following twelve-month period beginning July 1. It may, of course, renew its participation for any subsequent twelve-month period beginning on July 1 by adopting the appropriate resolution and filing it with the comptroller by the immediately preceding June 1.

Ms. Bright asks this office to consider the consequences for a county that has decided to discontinue its participation in the program section 51.702 establishes. Specifically, she asks about the amount that Ector County must pay as annual salary to the judge of a county court at law in that county if the commissioners court has not authorized the county clerk to collect the fee for the support of the judiciary that section 51.702 of the Government Code provides. Ector County has two statutory county courts. See Gov't Code § 25.0701.

The legislature enacted section 51.702 of the Government Code by the passage of the same bill that enacted section 25.0005 of the Government Code. See Acts 1991, 72d Leg., ch. 746, §§ 4, 6, 67, at 2620, 2621, 2622, 2638. See generally *Camacho v. Samaniego*, 831 S.W.2d 804, 806-07 n.4 (Tex. 1992). Under section 25.0005(a) of the Government Code, the commissioners court must pay a statutory county court judge a total annual salary in "an amount that is at least equal to the amount that is \$1,000 less than the total annual salary" that a district judge in that county receives unless the county court judge engages in the private practice of law or unless the court does not collect fees and costs pursuant to section 51.702. Section 25.0005(b) provides that, subject to any salary requirements that a specific section in chapter 25 provides for a particular court or county, "the commissioners court sets the salary of each statutory county court judge who engages in the private practice of law or in whose court fees and costs under Section 51.702 are not collected."

Because Ector County does not collect fees and costs pursuant to section 51.702 of the Government Code, the commissioners court must set the salary of each statutory county court judge in accordance with section 25.0005(b) of the Government Code. See Local Gov't Code § 152.011 (requiring county commissioners court to set amount of compensation, office and travel expenses, and all other allowances for county and precinct officers and employees whom county pays solely out of county funds). Section 25.0005(b) does not specify any minimum or maximum amount with which a commissioners court must comply when it sets the salary of statutory county court judges. While section 25.0005(b) expressly recognizes that other sections in the chapter may impose salary requirements upon a particular court or county, see also Gov't Code § 25.0001(a) (providing that chapter 25, subchapter A applies to each statutory county court in this state to extent that specific provision for particular court or county does not conflict with subchapter A), we are unaware of any statute limiting Ector County's discretion to reduce the salaries of its statutory county court judges,<sup>2</sup> cf. Gov't Code

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<sup>2</sup>Section 152.013 of the Local Government Code establishes the procedure whereby a county commissioners court must set the salary of elected county officers. Under section 152.013(a), the commissioners court must set the salary of elected officers during the regular budget hearing and adoption proceedings. This office has stated in prior opinions that the commissioners court may modify an elected county official's salary only during the regular budget hearing. See Attorney General Opinions JM-839 (1988) at 6; H-643 (1975) at 2 (construing statutory predecessor to Gov't Code § 152.013); H-11 (1973) at 3 (same). Significantly, however, section 152.017(1) of the Local Government Code excepts from chapter 152, subchapter B, which includes section 152.013, "a judge of a court of record." Accordingly, we do not

§ 25.0702(e) (providing maximum annual salary that Ector County may pay judges of county courts at law).

### S U M M A R Y

On its face, section 51.702(f) of the Government Code requires the commissioners court of a county that desires to continue participating in the program section 51.702 establishes annually to adopt a resolution authorizing the clerk of the statutory county court to collect the fees and costs section 51.702 authorizes. Furthermore, the county must file its resolution with the comptroller "not later than June 1 immediately preceding the 12-month period during which" the county will collect fees and costs under section 51.702. Failure to adopt an appropriate resolution and to file that resolution with the comptroller's office by June 1 results in the county's exclusion from the program beginning July 1.

Because Ector County does not collect fees and costs pursuant to section 51.702 of the Government Code, it need not comply with section 25.0005(a) of the Government Code, which requires counties collecting such fees and costs to pay certain statutory county court judges "an amount that is at least equal to the amount that is \$1,000 less than the total annual salary" that a district judge in the county receives. Rather, Ector County may set the annual salaries of its statutory county court judges in accordance with section 25.0005(b) of the Government Code, which does not stipulate a minimum annual salary.

Yours very truly,

  
Sarah J. Shirley  
Chair, Opinion Committee

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believe that the commissioners court must wait until the new fiscal year to reduce the salary of its statutory county court judges.