



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

December 6, 1996

The Honorable Steven C. Hilbig
Bexar County Criminal District Attorney
300 Dolorosa, Suite 5072
San Antonio, Texas 78205-3030

Letter Opinion No. 96-131

Re: Fee for filing verified petition for occupational driver's license following conviction for driving while intoxicated (ID# 38941)

Dear Mr. Hilbig:

You ask if county and district clerks should "charge the statutory filing fee for an original action and issue a new cause number to a verified petition applying for an occupational driver's license following a conviction of D.W.I. (driving while intoxicated) or intoxication assault pursuant to the provisions of Section 521.242(b) of the Texas Transportation Code." We believe that your analysis of the question is correct: a petition applying for an occupational driver's license is a new civil action unrelated to the prior proceeding in the convicting court. Therefore, when such a petition is filed, the county or district clerk should charge the statutory filing fee for an original action and issue a new cause number.

Section 521.242(b) of the Transportation Code reads as follows:

A person may apply for an occupational license by filing a verified petition only with the judge of the county court or district court in which the person was convicted if:

(1) the person's license has been suspended for a conviction under Section 49.04 or 49.07, Penal Code; and

(2) the person has not been issued, in the 10 years preceding the date of the filing of the petition, more than one occupational license after a conviction under Section 49.04 or 49.07, Penal Code, or Article 6701I-2, Revised Statutes, as that law existed before January 1, 1984.

This statute requires a person wishing to obtain an occupational driver's license to file a verified petition in the court that originally convicted him. We believe this is a new action rather than a continuation of the original proceeding in the convicting court. First, we believe it is significant that the legislature used the word "petition," a word usually associated with the initiation of civil

actions.¹ The rules of civil procedure provide that “[a] civil suit in the district or county court shall be commenced by a petition filed in the office of the clerk.” Tex. R. Civ. P. 22. This strongly suggests that the legislature intended that an individual seeking an occupational driver’s license, by filing a petition, commences a new civil suit. Furthermore, the occupational driver’s license application provisions predate the requirement that an applicant file a petition for an occupational driver’s license in the convicting court, which is relatively new. *See* Act of May 17, 1991, 72d Leg., R.S., ch. 225, 1991 Tex. Gen. Laws 905, 905. The legislative history of the provision enacting the requirement indicates that the legislature did not intend to combine such an application with the proceeding in the convicting court but merely intended to ensure that an application would be heard by the court most familiar with the facts relating to the conviction. *See* House Research Organization, Bill Analysis, H.B. 173, 72d Leg., R.S. (1991) (supporters say “[t]he judge who best knows the circumstances regarding the conviction can best determine if an occupational license is justified.”). Because a petition for an occupational driver’s license initiates a new action, the clerk should charge the fee for an original civil suit and assign a new cause number.

S U M M A R Y

When a person files a petition to obtain an occupational driver’s license, county and district clerks should charge the fee for filing an original civil suit or filing an original action and assign a new cause number.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

¹While the Transportation Code does not define the term “petition,” *Black’s Law Dictionary* defines “petition,” in part, as “[a] written address, embodying an application or prayer from the person or persons preferring [sic] it, to the power, body, or person to whom it is presented, for the exercise of his or their authority in the redress of some wrong or the grant of some favor, privilege, or license.” BLACK’S LAW DICTIONARY 1031 (5th ed. 1979).