



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 20, 1997

The Honorable James Warren Smith, Jr.  
Frio County Attorney  
500 East San Antonio Street  
Box 1  
Pearsall, Texas 78061-3100

Letter Opinion No. 97-074

Re: Whether a juvenile court may assess a fee for court costs pursuant to Family Code section 54.0411 in a modification of prior disposition order when a modification hearing has been waived (ID# 39338)

Dear Mr. Smith:

You ask whether a fee for court costs authorized under Family Code section 54.0411 may be assessed in a modification of disposition order in certain circumstances. Based on the language of section 54.0411, we conclude in the negative.

Section 54.03 of the Family Code provides for an adjudication hearing to determine whether a child<sup>1</sup> has engaged in delinquent conduct<sup>2</sup> or conduct indicating a need for supervision.<sup>3</sup> After the adjudication hearing, a juvenile court ("court")<sup>4</sup> must hold a separate and distinct disposition<sup>5</sup> hearing. Fam. Code § 54.04(a). At the disposition hearing, a court must first determine that the child is in need of rehabilitation, or the protection of the public or the child requires that disposition be made. *Id.* § 54.04(c). If the court so finds, the court may order the child to be placed on probation or be committed to the Texas Youth Commission. *Id.* § 54.04(d). Any disposition, other than one which already committed the child to the commission, may be modified by a court after a hearing on the petition to modify disposition. *Id.* § 54.05(a), (d). A hearing must be held prior to commitment to the commission as a modified disposition. *Id.* § 54.05(h). In other disposition

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<sup>1</sup>For purposes of title 3 of the Family Code, a "child" is a person who is "(A) ten years of age or older and under 17 years of age; or (B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age." Fam. Code § 51.02(2).

<sup>2</sup>See *id.* § 51.03(a) (defining "delinquent conduct").

<sup>3</sup>See *id.* § 51.03(b) (defining "conduct indicating a need for supervision").

<sup>4</sup>A juvenile court has exclusive jurisdiction of all proceedings under title 3 of the Family Code. *Id.* § 51.04(a).

<sup>5</sup>The term "disposition," in the juvenile area, replaces the term "sentence" or "punishment." *Murphy v. State*, 860 S.W.2d 639, 641 n.1 (Tex. App.--Fort Worth 1993, no writ); see also Attorney General Opinion DM-200 (1993) at 2 n.3 (disposition parallels sentencing portion of criminal proceedings).

modifications, however, the child may waive the hearing in accordance with section 51.09.<sup>6</sup> *Id.* You thus ask:

In those modifications of prior disposition orders where a waiver has been executed pursuant to Section 51.09(a) and 54.05(h) and the Orders to Modify the previous Disposition Orders are signed by the Judge without a hearing, can court costs pursuant to Section 54.0411(a) still be assessed to the parents (custodians or guardians) and the juveniles, the subjects of the Modification of the previous Disposition Orders?

Section 54.0411(a) provides as follows:

*If a disposition hearing is held under Section 54.04 of this code, the juvenile court, after giving the child, parent, or other person responsible for the child's support a reasonable opportunity to be heard, shall order the child, parent, or other person, if financially able to do so, to pay a fee as costs of court of \$20. [Emphasis added.]*

The statute by its terms conditions the assessment of the fee as costs of court on the holding of a disposition hearing under section 54.04. In the situation you describe, no hearing is held.<sup>7</sup> Additionally, it follows, no reasonable opportunity is provided to the child or party responsible for the child to be heard on the fee payment issue. Thus, the prerequisites for assessing the fee authorized under section 54.0411 do not exist. Accordingly, we conclude that a court may not assess a fee for court costs pursuant to section 54.0411(a) in an order modifying disposition when a modification hearing has been waived pursuant to section 54.05(h).

You suggest that the "State of Texas"<sup>8</sup> should be allowed to recoup the costs incurred for service of the motion for modification and its summons<sup>9</sup> on a child by the assessment of the twenty

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<sup>6</sup>Section 51.09(a) provides that unless indicated otherwise in title 3 of the Family Code, any rights granted to a child by such title or by the constitution or laws of the state or the United States may be waived in a proceeding under title 3 if certain requirements are met.

<sup>7</sup>You do not ask and we do not consider whether, as a threshold matter, a modification hearing under section 54.05 of the Family Code is a "disposition hearing . . . held under Section 54.04."

<sup>8</sup>Ninety percent of the amounts collected under section 54.0411 are required to be remitted to the comptroller of public accounts, and are appropriated to the Texas Juvenile Probation Commission in amounts determined necessary by the legislature. Fam. Code § 54.0411(e), (h). A county is authorized to retain the remaining ten percent as a service fee and any accrued interests on the funds collected. *Id.* § 54.0411(e).

<sup>9</sup>You state that in your opinion it is advisable to at least personally serve the juvenile with a motion and summons for a modification hearing since personal service on a juvenile is required for an adjudication hearing. *See id.* § 54.05(d) (court must hold an adjudication hearing when petition to modify is filed under section 51.03(a)(2));

(continued...)

dollar fee. Your argument appears to be that existence of court costs is or should be sufficient basis to assess the section 54.0411(a) fee. We find nothing in the language of section 54.0411 or other authority<sup>10</sup> that supports such an interpretation. Although the legislature could have, it did not premise assessment of the fee on the existence of court costs. Whether the state should recoup court costs in all circumstances is a matter appropriately addressed to the legislature.

S U M M A R Y

A court may not assess a fee for court costs pursuant to Family Code section 54.0411(a) in an order modifying disposition when a modification hearing has been waived pursuant to Family Code section 54.05(h).

Yours very truly,



Sheela Rai  
Assistant Attorney General  
Opinion Committee

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<sup>9</sup>(...continued)

*J.K.A. v. State*, 855 S.W.2d 58, 63 (Tex. App.--Houston [14th Dist.] 1993, writ denied) (motions to modify based on violation of substantive law underlying probation rules requires full due process adjudication hearing under section 54.03). *But see Murphy*, 860 S.W.2d at 643 (hearing to modify disposition not a new adjudication); *In re D.E.P.*, 512 S.W.2d 789, 791 (Tex. Civ. App.--Houston [14th Dist.] 1974, no writ) (section 54.05 does not require service of process for modification hearing, only reasonable notice); *J.K.A.*, 855 S.W.2d at 62-3 (if motion to modify based on violation of court order, prior disposition can then be modified without new adjudication hearing). Therefore, you continue, since costs are incurred in the service of process, such costs will have been incurred by the time the juvenile and his attorney announce ready before the hearing begins in court and waive the hearing to modify a prior disposition.

<sup>10</sup>Section 53.07 of the Family Code, dealing with service of summons, provides that the juvenile court may authorize payment from the county's general funds of the costs of service. *Id.* 53.07(d).