



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 8, 1997

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

Letter Opinion No. 97-107

Re: Disposition of state payment to county for  
transporting prisoners to Texas Department of  
Criminal Justice (ID# 39457)

Dear Mr. Smith:

You inquire about the disposition of payments that Frio County has received from the state for transporting inmates to facilities of the Texas Department of Criminal Justice ("TDCJ") from September 5, 1995 through August 26, 1996. When a prisoner is sentenced to the institutional division or the state jail division of TDCJ, the division is responsible for the cost of transporting prisoners from the county of conviction to one of its facilities.<sup>1</sup> In either case, the sheriff may transport inmates to the TDCJ facility if the sheriff is able to perform the service as economically as the TDCJ division.<sup>2</sup>

Due to a shortage of sheriff's deputies, a Frio County constable transported a number of prisoners to state facilities. He used his own vehicle and has been reimbursed from the sheriff's budget at \$.205 per mile, the rate set by the commissioners court for the relevant time period.<sup>3</sup> The state has paid the sheriff's claim for reimbursement at its usual rate: \$.50 per mile for one or two inmates transported per trip and \$1.50 per mile for three or more inmates per trip. You wish to know how to allocate the portion of the state payment that remains after reimbursing the constable for his mileage.<sup>4</sup>

We have learned from TDCJ employees<sup>5</sup> that the reimbursement rate of \$.50 per mile for transporting one or two inmates and \$1.50 per mile for transporting three or more inmates is based on the usual state mileage reimbursement rate of \$.25 - .28 per mile for use of a personally owned

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<sup>1</sup>Gov't Code §§ 501.006(a), 507.024.

<sup>2</sup>*Id.* § 501.006, 507.024.

<sup>3</sup>See Local Gov't Code §§ 152.011, .013.

<sup>4</sup>We assume that the constable has been fully reimbursed for the expenses of the trips, and that there are no longer any claims for reimbursement of expenses applicable to the remainder of the state payment.

<sup>5</sup>Telephone conversation with Assistant Director, Programs and Services Division, Texas Department of Criminal Justice.

vehicle<sup>6</sup> plus an element of compensation based on the salary and benefits paid a security officer. The reimbursement rate is greater for three or more inmates because it was thought that an additional officer would be needed to provide sufficient security. Thus, the state reimbursement rate includes an element of compensation to the sheriff's department for providing the service. Moreover, since the constable transported the prisoners for the sheriff, a county officer, and has been reimbursed at the county mileage rate, we believe that the difference between the state mileage rate and the county mileage rate should also be characterized as compensation.<sup>7</sup>

Article XVI, section 61 of the Texas Constitution provides that precinct and county officers must be compensated on a salary basis.<sup>8</sup> An officer paid on a salary basis receives the salary instead of any fees, commissions, or other compensation that the officer would be otherwise authorized to keep. Money received in the form of fees or other compensation except for salary must be deposited with the county treasurer according to section 113.021 of the Local Government Code. The county treasurer is to deposit the money in the county depository in a special fund to the credit of the officer who received the money, in this case, to the credit of the sheriff's department.<sup>9</sup>

### S U M M A R Y

The Frio County sheriff's department has received payment from the state for transporting prisoners to the Texas Department of Criminal Justice in excess of the mileage payment to the constable who actually performed the service. The excess payment from the state represents compensation and must be deposited in the county treasury pursuant to section 113.021 of the Local Government Code.

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Opinion Committee

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<sup>6</sup>General Appropriations Act, Act of May 25, 1995, 74th Leg., R.S., ch. 1063, art. IX, § 14(1)(a), 1995 Tex. Gen. Laws 5242, 6074 (mileage reimbursement rate for state employees may not be less than 25 cents per mile or more than 28 cents per mile).

<sup>7</sup>See Letter Opinion No. 93-33 (1993) (discussing difference between compensation and reimbursement of expenses under Tex. Const. art. XVI, § 40).

<sup>8</sup>Article XVI, section 61 applies to all county officers in counties having a population of twenty thousand or more. In other counties, the commissioners court may decide to compensate county officers on a salary basis. We assume that Frio County, which is less than 20,000 in population, has chosen to compensate county officers on a salary basis.

<sup>9</sup>Local Gov't Code § 113.021.