



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 20, 1998

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

Letter Opinion No. 98-067

Re: Whether a justice of the peace must deposit the fee collected under Transportation Code section 543.106 with the county treasury, and related questions (RQ-992)

Dear Mr. Smith:

Transportation Code section 543.106(c) requires a justice of the peace to deposit a fee collected under subsection (a) "in the county treasury." Moreover, article XVI, section 61 of the Texas Constitution requires a county officer to pay fees into the county treasury; likewise, Local Government Code section 113.021 requires a county officer to deposit fees belonging to the county with the county treasurer. You ask whether a justice of the peace must deposit fees he or she has collected in accordance with Transportation Code section 543.106(a) ("defensive-driving-course fees") in the justice's separate account in the county depository or in the county treasury. Based on the plain language of the constitution and statutes, we conclude that the fees must be deposited in the county treasury.

You ask several other questions about defensive-driving-course fees. If we conclude that a justice of the peace must deposit the fees into the county treasury, which we do, you ask which entity determines how the fees are to be spent: the commissioners court or the justice. We conclude that the commissioners court controls the use of the fees, although the fees may be spent only in accordance with Transportation Code section 543.106 and Local Government Code section 154.023(a). We understand you to ask next whether the commissioners court must set up a line item in the annual budget that will permit a justice to perform the administrative duties Transportation Code chapter 543, subchapter B devolves on the justice. We conclude that no line item is needed to permit a justice to perform statutory administrative duties. Next, you ask us to delimit the purposes for which defensive-driving-course fees may be used. Consistent with Transportation Code section 543.106 and Local Government Code section 154.023(a), we conclude that the fees may be used only to fund the salaries of the justice of the peace and his or her employees, as well as authorized office expenses, in an amount proportional to the amount of time or quantity of supplies or equipment dedicated to administering Transportation Code chapter 543, subchapter B. Your final question is premised upon an assumption that the justices of the peace have total discretion to use the defensive-driving-course fees, and because we conclude to the contrary, we do not answer it.

We begin by examining the relevant fee statute in its context: Transportation Code section 543.106, a part of chapter 543, subchapter B. Under this subchapter, an individual charged with committing certain offenses in the operation of a motor vehicle or motorcycle may complete a driving-safety course or a motorcycle-operator-training course and request the court to dismiss the charge.¹ The court may require an individual “requesting a driving safety course”² to pay no more than \$10.00 to the court, which amount is to include any other fee the court is authorized to collect.³ The sum remaining after other fees are subtracted is to be used “to cover the costs of administering this subchapter.”⁴ Fees collected by a court other than a municipal court “shall be deposited in the county treasury of the county in which the court is located.”⁵

We assume from your questions that you ask about the amount remaining after the court has subtracted amounts it is authorized to collect under other law. We limit your questions, thus, to that portion of the \$10.00 (maximum) fee that must be expended “to cover the costs of administering” Transportation Code chapter 543, subchapter B.

Our analysis and conclusions are guided by Attorney General Opinion DM-199, in which this office determined that a county tax assessor-collector must deposit with the county treasurer the motor-vehicle-registration fee collected under section 4.202(a) of the County Road and Bridge Act.⁶

¹See Transp. Code §§ 543.101 - .104, .108.

²Transportation Code section 543.106(a), by its terms, allows a court to collect a fee only of an individual who requests a *driving safety course*. Section 543.102 distinguishes a driving-safety course from a motorcycle operator training course. We do not consider in this opinion, however, whether the term *driving safety course* in section 543.106 encompasses a motorcycle operator training course.

³Transp. Code § 543.106(a).

⁴*Id.* The substance of Transportation Code section 543.106(c) was added to the section’s statutory predecessor, V.T.C.S. article 6701d, section 143A, in 1987. See Act of May 31, 1987, 70th Leg., R.S., ch. 502, § 2, 1987 Tex. Gen. Laws 2115, 2116. As introduced, the 1987 bill pertained solely to revoking a driver’s license because the driver is addicted to alcohol or a controlled substance. See H.B. 273, 70th Leg., R.S. (1987). The amendments to V.T.C.S. article 6701d, section 143A were added on the Senate Floor. See S.J. of Tex., 70th Leg., R.S. 2219-20 (1987). We found no legislative history illuminating how the legislature intended the defensive-driving-course fees to be used.

⁵Transp. Code § 543.106(c).

⁶See Attorney General Opinion DM-199 (1993) at 2. In 1993, when Attorney General Opinion DM-199 was issued, the County Road and Bridge Act was codified as V.T.C.S. art. 6702-1. Article 6702-1 was repealed in 1995, see Act of May 1, 1995, 74th Leg., R.S., ch. 165, § 24(a), 1995 Tex. Gen. Laws 1025, 1871. Article 6702-1, section 4.202(a), V.T.C.S., the section at issue in Attorney General Opinion DM-199, is currently codified as Transportation Code section 502.109. See Transp. Code derivation table.

Attorney General Opinion DM-199 concerns a salaried county officer in a county with a population higher than 190,000. See Attorney General Opinion DM-199 (1993) at 2 n.1. Salary funds for officers in counties with populations higher than 190,000 are governed by Local Government Code chapter 154, subchapters A and C. See Local Gov’t Code

(continued...)

The treasurer in turn must deposit the fee “to the credit of the officer’s salary fund,”⁷ unless the commissioners court has properly ordered that monies ordinarily deposited in a salary fund be deposited instead into the county’s general fund.⁸

Attorney General Opinion DM-199 further concludes that the motor-vehicle-registration fee may be used only for those expenses for which salary funds may be used and that were incurred in administering motor-vehicle-registration laws.⁹ Section 4.202(a) itself stated that the motor-vehicle-registration fees were to compensate the county tax assessor-collector for services related to motor-vehicle-registration laws.¹⁰ Thus, while the commissioners court must appropriate the fees to the purposes for which salary funds may be used,¹¹ the commissioners court may “budget only as much funds as it determines are reasonably necessary to ‘compensate’ the office of the tax assessor-collector for its expenses in administering the motor vehicle registration laws.”¹² The county commissioners court, we warned, “is not authorized to divert these [statutorily dedicated] funds to other uses.”¹³

We turn now to your questions. We conclude in response to your first question that a justice of the peace must deposit defensive-driving-course fees in the county treasury. Certainly, a justice of the peace may not deposit county funds into an account separate from the county treasury.¹⁴ In addition, section 543.106(b) unequivocally requires the court to deposit the fee into “the county treasury of the county in which the court is located.” Moreover, the constitution and Local Government Code require this result. Article XVI, section 61 of the Texas Constitution requires a

⁶(...continued)

§ 154.041. Frio County, on the other hand, has a population lower than 190,000; its salary funds are therefore governed by chapter 154, subchapters A and B. *See id.* § 154.021. The conclusions Attorney General Opinion DM-199 reaches, however, apply to the questions you ask.

⁷Attorney General Opinion DM-199 (1993) at 2.

⁸*See id.* at 3.

⁹*See id.* at 4.

¹⁰*See id.* at 1, 4.

¹¹*Compare* Local Gov’t Code § 154.023(a) (describing items to be paid from salary fund in county with population lower than 190,000) *and infra* at 7 (setting forth Local Gov’t Code § 154.023(a)); *with id.* § 154.042 (describing items to be paid from salary fund in county with population higher than 190,000).

¹²Attorney General Opinion DM-199 (1993) at 4.

¹³*Id.*

¹⁴*See* Attorney General Opinion DM-396 (1996) at 8; Letter Opinion No. 98-4 (1998) at 1.

county officer to pay fees into the county treasury of the county in which the fees are earned.¹⁵ Consistently with the constitution, Local Government Code section 113.021(a) requires an officer who has collected fees belonging to the county to deposit the money with the county treasurer.¹⁶

We further conclude that the treasurer is to deposit the fees into either the county's salary fund to the credit of the collecting justice or, if the county commissioners court has properly ordered it, the county's general fund. Article XVI, section 61 of the state constitution mandates that fees be paid to the county treasury "for the account of the proper fund." Likewise, Local Government Code section 113.021(b) requires the county treasurer to deposit fees received from the collecting officer in the county depository "in a special fund to the credit of the" collecting officer. In the case of fees collected by a salaried county officer, such as a justice of the peace in your county, the appropriate special fund is the salary fund.¹⁷ The commissioners court annually may order that all money that otherwise would be deposited in the salary fund be deposited instead in the county's general fund, however.¹⁸ You do not indicate whether the Frio County Commissioners Court has so ordered, and we are therefore unable to ascertain whether the fees should be deposited into the salary fund or the county's general fund.

In answer to your second question, we conclude that, as between the commissioners court and the justices of the peace, it is the commissioners court that controls the use of defensive-driving-course fees. It is the county commissioners court that determines, in the county budgeting process, the amounts to which the justice of the peace and his or her employees are entitled for salary and office expenses.¹⁹ Local Government Code section 152.011 requires the commissioners court to "set the amount of the compensation, office and travel expenses, and all other allowances for county and precinct officers and employees who are paid wholly from county funds."²⁰ Once budgeted, the

¹⁵See *Wichita County v. Robinson*, 276 S.W.2d 509, 513 (Tex. 1954) (quoting *Settegast v. Harris County*, 159 S.W.2d 543, 544 (Tex. Civ. App.--Galveston 1942, writ ref'd)) (asserting that article XVI, section 61 "plainly provides . . . that all fees earned by county officers shall be paid into the county treasury"); *State v. Glass*, 167 S.W.2d 296, 299 (Tex. Civ. App.--Galveston 1942), writ ref'd, 170 S.W.2d 470 (Tex. 1943) (same).

¹⁶See also Local Gov't Code § 154.003 (requiring county officer who is paid on salary basis to dispose of fees as Local Government Code sections 113.021 through 113.024 provide). You inform us that Frio County justices of the peace are compensated on a salary basis. See Tex. Const. art. XVI, § 61.

¹⁷See Local Gov't Code § 113.021(b); *id.* ch. 154.

¹⁸See *id.* § 154.007(a). Even if Frio County deposits fees into a salary fund, the commissioners court may transfer surplus money at the end of a fiscal year into the county's general fund. See *id.* § 154.026.

¹⁹See 35 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 7.13 (Texas Practice 1989).

²⁰Local Government Code section 152.011, as well as other provisions in chapter 152, subchapter B of that code, does not apply to a judge of a court of record. See Local Gov't Code § 152.017(1). A justice of the peace court is not a court of record. See *United States v. Hanson*, 469 F.2d 1375, 1377 (5th Cir. 1972), questioned on other grounds, *United States v. Comstock*, 805 F.2d 1194 (5th Cir. 1986); *Warren v. Barron Bros. Millinery Co.*, 23 S.W.2d 686, 687 (continued...)

defensive-driving-course fees are expended just as other monies in the officers' salary fund (or, if the commissioners court has properly so ordered, the county general fund). In accordance with Local Government Code section 154.024, a Frio County justice of the peace must prepare a monthly expense report detailing the officer's expenses and accompanied by invoices and requisitions. With the approval of the county judge or the commissioners court, the county pays the justice's expenses.²¹ We caution, however, that the commissioners court's discretion as to the use of defensive-driving-course fees is circumscribed by Transportation Code section 543.106 and Local Government Code section 154.023(a), as we will explain in answer to your fourth question.

You ask third whether the commissioners court must set up a line item in the annual budget to permit justices to "administer," as you say, the use of the fees. Because, as we have stated, the commissioners court controls the use of the fees, we are uncertain as to your meaning. Moreover, this question appears to be premised on what we believe is an erroneous interpretation of Local Government Code section 111.004(a). That section requires a county to prepare an annual budget that shows "as definitely as possible each of the projects for which an appropriation is established in the budget and the estimated amount of money carried in the budget for each project." We read this section to provide general guidance as to the preparation of the budget, but not to set definite requirements for how specific line items must be. Nor do we read the section to require a separate line item for each category of expenditures whose funding is provided by a specific non-tax source, such as the defensive-driving-course fee. For these reasons, we construe your question to be whether the commissioners court must set up a line item for the justices of the peace to perform administrative duties related to Transportation Code chapter 543, subchapter B.

A line item is not needed to authorize a justice of the peace to perform the administrative duties Transportation Code chapter 543, subchapter B devolves upon the justice. For example, under Transportation Code section 543.102 the court must notify a defendant charged with an offense under Transportation Code title 7, subtitle C of the right to successfully complete a defensive driving course. If the defendant opts to complete a defensive driving course, the court must defer proceedings to permit the defendant to take the course and provide evidence of successful completion.²² If the defendant then fails to submit evidence of successful completion, the court must notify the defendant of the failure and may extend the time in which the defendant may successfully

²⁰(...continued)

(Tex. 1930); *Ex parte Quong Lee*, 31 S.W. 391, 391 (Tex. Crim. App. 1895); *Hutcherson v. Blewett*, 58 S.W. 150, 151 (Tex. Civ. App.--1900, no writ).

²¹See 35 BROOKS, *supra* note 19, at 231. Under Local Government Code section 113.901(a), a county auditor may not approve an account unless it is supported by a requisition that has been signed by the officer who is making the purchase and approved by the county judge. The county judge of a county that has a county auditor may, however, waive the requirement that he or she approve all requisitions. See Local Gov't Code § 113.901(c). If the county judge properly waives approval power, the commissioners court instead approves all requisitions. See *id.*

²²See Transp. Code §§ 543.103, .104.

complete the course.²³ Finally, upon receiving evidence that the defendant has successfully completed the course, Transportation Code section 543.108 requires the court to dismiss the charge and to notify the state Department of Transportation of the defendant's successful course completion.

Thus, we believe the commissioners court's and a justice's authority with respect to the use of the defensive-driving-course fees and the defensive-driving-course program is analogous to a commissioners court's and a county clerk's authority with respect to the records-management-and-preservation fees collected in accordance with Local Government Code section 118.011(b)(2) and the projects for which those fees may be used. Records-management-and-preservation fees collected under Local Government Code section 118.011(b)(2) are for "the records management and preservation services" a county clerk performs after filing and recording a document.²⁴ Local Government Code section 118.0216 permits the fees to be used only "for specific records preservation and automation projects." In *Hooten v. Enriquez*²⁵ the Texas Court of Appeals determined that the county commissioners court controls the records-management-and-preservation fees,²⁶ but the county clerk has statutory authority to dictate what a records-management-and-preservation program is.²⁷

[I]t is the duty and responsibility of the County Clerk to designate what constitutes preservation of records and automation in his office and to assign his employees specific tasks, all or some of which may relate to records preservation and automation. He does not, however, have the unbridled discretion to expend money out of the Records Management and Preservation Fund as he sees fit.

It is the Commissioners Court that has the budgetary duty and responsibility of allocating all county funds, including ear-marked funds such as the one involved here. In order to carry out this duty, it necessarily follows that the Commissioners Court must make the initial determination from information furnished by the County Clerk and/or from its own independent study of what kinds of work constitute "preservation of records and automation."²⁸

²³See *id.* § 543.107.

²⁴See Local Gov't Code § 118.0216.

²⁵863 S.W.2d 522 (Tex. App.--El Paso 1993, no writ).

²⁶See *id.* at 529.

²⁷See *id.* at 531.

²⁸*Id.* at 534 (Koehler, J., concurring).

Thus, a justice of the peace is statutorily required to administer the defensive-driving-course program under Transportation Code chapter 543, subchapter B, but only the commissioners court may allocate the defensive-driving-course fees.²⁹

In response to your fourth question, we conclude that defensive-driving-course fees may be used only in accordance with Transportation Code section 543.106 and Local Government Code section 154.023(a). Transportation Code section 543.106 limits the fees' use to administering chapter 543, subchapter B of that code.³⁰ Local Government Code section 154.023(a) further restricts the uses to which monies in a salary fund may be put:

The following items shall be paid from the [salary] fund:

- (1) salaries of district, county, and precinct officers;
- (2) salaries of the officers' deputies, assistants, and clerks; and
- (3) the authorized expenses of the offices of those officers.

Taken together, we believe that defensive-driving-course fees may be used only for that portion of the salaries and expenses authorized in Local Government Code section 154.023 that are incurred in administering Transportation Code chapter 543, subchapter B. We find no authority for using the fees for any other purpose.

We need not answer your final question because it is premised upon an assumption that justices of the peace have total discretion to use fees collected under Transportation Code chapter 543, subchapter B. We concluded above that this assumption is incorrect.

²⁹Your brief suggests that Local Government Code section 111.004 mandates the preparation of budget line items to cover the program's administration. Section 111.004 requires the county judge, in preparing the proposed budget, to include a financial statement indicating "funds available from all sources during the ensuing fiscal year." Section 111.005 states that the judge "may require any county officer to furnish information necessary for the judge to properly prepare the budget." In preparing the financial statement, the judge reasonably might ask a justice of the peace to estimate (1) the amount of revenue that the county will receive from driving-safety-course fees, and (2) the cost of administering the program. Conceivably, a precinct could have such a volume of driving-safety-course cases as to justify, e.g., hiring a full-time clerk whose work would be devoted exclusively to that activity. In that event, a budget line item would be needed. We cannot say as a matter of law, however, that a line item is required in all cases.

³⁰The term *administer* does not have a strict legal or technical meaning, but it is commonly understood to mean *manage* or *conduct*. See *William Buchanan Found. v. Shepperd*, 283 S.W.2d 325, 334 (Tex. Civ. App.--Texarkana 1955), *rev'd on other grounds*, 289 S.W.2d 553 (Tex. 1956); Gov't Code § 311.011(a) (mandating that statutory words be construed according to common usage).

S U M M A R Y

A justice of the peace may not deposit any county funds, including fees collected under Transportation Code section 543.106, into an account separate from the county treasury. Instead, a justice must deposit fees collected under Transportation Code section 543.106 in the county treasury. In a county that pays its justices of the peace on the salary basis, the treasurer in turn must deposit the fees into either the county's salary fund to the credit of the collecting justice or, if the county commissioners court has properly ordered it, into the county's general fund. The commissioners court ultimately controls the use of the fees. The commissioners court need not budget a line item for to permit the justices of the peace to perform administrative duties associated with Transportation Code chapter 543, subchapter B because those duties are imposed upon the justice's office by statute. Fees collected under Transportation Code section 543.106 may be used to pay only that portion of the salaries and expenses authorized in Local Government Code section 154.023(a) that are incurred in administering Transportation Code chapter 543, subchapter B.

Yours very truly,



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