



Office of the Attorney General
State of Texas

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September 22, 1998

The Honorable Rodney Ellis
Chair, Jurisprudence Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 98-076

Re: Clarification of Attorney General Opinion
DM-464 (1997): Time Payment Fee imposed by
section 51.921, Government Code (RQ-1112)

Dear Senator Ellis:

You have requested our opinion regarding Attorney General Opinion DM-464 (1997), in which we addressed questions about the time payment fee imposed by section 51.921 of the Government Code. A question has arisen as to whether the \$25.00 fee may be assessed more than once per court order if a defendant initially defaults on a payment plan and the court later agrees to reinstate the payment plan.

Section 51.921 of the Government Code provides:

In addition to other fees authorized or required by law, the clerk of each district court, statutory county court, county court of law, justice court, and municipal court shall collect a fee of \$25 from a person who:

- (1) has been convicted of a felony or misdemeanor;
- (2) has been ordered to pay a fine, court costs, or restitution by the court; and
- (3) seeks to pay the fine, court costs, or restitution over a period of time rather than immediately.

Section 51.921 allows the collection of a fee of \$25 when a convicted defendant opts not to pay his fine, court costs, or restitution immediately. A court is authorized to reinstate a payment plan after a defendant has defaulted on payment, but not to impose a second time payment fee on the same judgment of conviction.

A court must impose a separate time payment fee for each separate conviction for which payment is not immediate. If, for example, a court finds a defendant guilty of three separate offenses, the court is required to enter a judgment of conviction on each charge. If the defendant

chooses not to pay the fine and court costs immediately, each judgment of conviction will carry a separate time payment fee. Although the court has the discretion to order a consolidated payment plan incorporating all three convictions, each judgment of conviction will nonetheless require the payment of a separate \$25 time payment fee.

You also ask whether “local governments retain their statutory authority to enforce fine payment, as they would had the \$25.00 time payment fee never been assessed.” Section 51.921 does not purport to alter a court’s authority to enforce payment of fines. Article 43.03 of the Code of Criminal Procedure provides:

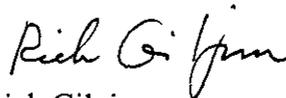
(a) If a defendant is sentenced to pay a fine or costs or both and he defaults in payment, the court after a hearing under Subsection (d) of this article may order him confined in jail until discharged as provided by law or may order him to discharge the fines and costs in any other manner provided by Article 43.09 of this code. . . .

A hearing under subsection (d) of article 43.03 requires that the court make a determination that the defendant either is not indigent or has wilfully refused to pay the fine, *and* that no alternative method of discharging the fine and costs is appropriate. Thus, in answer to your second question, local governments retain the statutory authority to enforce payment of fines.

S U M M A R Y

The \$25.00 time payment fee authorized by section 51.921 of the Government Code must be assessed once per judgment of conviction when a defendant opts not to pay a fine, court costs, or restitution immediately. A court may not assess a second time payment fee when a payment plan is reinstated after default. Local governments retain their statutory authority to enforce payment of fines.

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee