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John Sharp

Comptroller of Public Accounts
Austin, Texas 78774

IO # 15169
MBS

RQ-332

February 12, 1992

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The Honorable Dan Morales
Attorney General
State of Texas
Supreme Court Building, 7th Floor
Austin, Texas 78701

Opinion Committee

Dear General Morales:

This is to request an Attorney General's Opinion related to Section 51.702 of the Government Code dealing with additional fees and court costs which litigants and defendants can be required to pay in statutory county courts under certain circumstances.

Section 67 of H.B. 66, adopted by the Regular Session of the 72nd Legislature, authorized the commissioners court in each county to adopt a resolution requiring the payment of 1) an additional \$20.00 filing fee in all civil cases filed in a statutory county court, and 2) an additional \$10.00 as a court cost on conviction of a criminal offense in a statutory county court. These amounts will be forwarded to my office for deposit into the judicial fund.

Each county in the State will not necessarily impose these additional charges resulting in a variance in these costs among the different counties. This variation may be permissible with regard to filing fees in civil cases; but, there is some question whether it is constitutionally permissible with regard to court costs imposed upon conviction of a criminal offense.

Texas Attorney General Opinion No. JM-880 (1988) involved a similar statutory scheme that permitted the commissioners court of each county to set reasonable fees to be charged for service of process by sheriffs and constables. As will likely occur in our present situation, these fees inevitably varied from county to county.

The opinion pointed out that in Texas, costs in misdemeanor criminal cases are assessed as part of the punishment, citing Ex parte Carson, 159 S.W. 2d 126

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(Tex. Crim. App. 1942); Ex parte Mann, 46 S.W. 828 (Tex. Crim. App. 1898) and Attorney General Opinion JM-443 (1986). It went on to reason that: "A law allowing different costs to be assessed in different counties for the same penal offense would have the effect of allowing the penalty for state-defined crimes to vary from county to county and would violate both 'due process' and 'equal protection' constitutional rights. U.S. Const., 5th Amend., 14th Amend., Tex. Const. art. I §§ 3, 19; Ex parte Carson, *supra*. See Memet v. State, 642 S.W. 2d 518 (Tex. App. - Houston [14th Dist.] 1982, pet. ref'd.); See also Ex parte Ferguson, 132 S.W. 2d 408 (Tex. Crim. App. 1939); Ex parte Sizemore, 8 S.W. 2d 134 (Tex. Crim. App. 1928)."

Consequently, that opinion concluded that "[c]ommissioners courts may not set fees for the execution of criminal warrants by the sheriff or constable in either misdemeanor or felony cases. Such fees in misdemeanor cases involving state criminal statutes must be uniform statewide--".

This authority causes me to question the constitutionality of Section 51.702 of the Government Code. A similar lack of statewide uniformity in misdemeanor criminal court costs would seem to be the inevitable result of its provisions. Since the comptroller's office administers the judicial fund into which these court costs will be deposited, I seek direction from your office on this point.

Specifically, my first two questions are:

Is Section 51.702(b) of the Government Code constitutionally infirm in allowing commissioners courts to impose additional court costs upon criminal conviction in statutory county courts given the fact that those costs will thus, not be uniform statewide? Is Section 51.702(a) invalid on similar grounds?

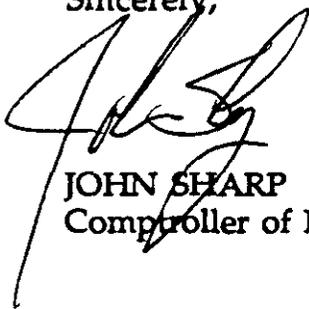
If either or both of these charges is invalid, other issues arise. The purpose of these charges is to fund a program whereby judges of statutory county courts at law will receive an annual salary that is not lower than \$1,000 less than that of a district judge in that county. One of the conditions of the program is that the judge must be one in whose court the fees mentioned above are collected. See Tex. Gov't. Code Ann. §25.005. Under § 25.0015, the state is required to "compensate each county that collects the additional fees and costs under Section 51.702 in an amount equal to \$25,000 for each statutory county court judge in the county..." from funds appropriated from the judicial fund.

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If either of the charges is invalid, will a participating county which continues to collect the other charge or fee be considered a county "that collects the additional fees and costs under Section 51.702" within the meaning of §25.0015?

Since the imposition of these fees can begin July 1, 1992, I will appreciate a prompt reply to my inquiry. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Sharp', written over the typed name.

JOHN SHARP
Comptroller of Public Accounts