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RQ-335

November 8, 1991

Attorney General's Opinion Division
Courts Building
P.O. Box 12548, Capitol Station
Austin, Texas 78711

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Opinion Committee

Attn: Madelein B. Johnson

Dear Ms. Johnson:

Attached hereto is S. B. 770 relating to the various fees charged by the County Clerk's Office. S. B. 770 is an amendment to Subchapter b chapter 118.011 Local Government Code and include a "Records Management and Preservation fee."

The Records Management and Preservation Fee is allowed for the records management and preservation services performed by the County Clerk after documents are filed with the clerk's office. S. B. 770 indicates that this fee in an amount not to exceed \$5.00 shall be paid at the time the document is filed. This amendment to the Local Government Code has caused a great deal of confusion on the part of the Hood County Clerk's Office and others across the State.

The questions and concerns may be categorized and outlined as follows:

1. Is the Records Management and Preservation Fee a "designated fee" under the control of the County Clerk?
2. Is there a requirement that the fee be deposited in a separate account subject to audit?
3. Is there a requirement that a separate account fund be maintained with the Treasurer?
4. After collection of the fee, should the County Clerk deposit the collected fee in the county depository as all other fees of office?

Subsection (b) Section 118.011 does not specify which documents generate a charge of a records management fee. Is the charging of a records management fee completely discretionary with the County Clerk, for documents filed with that office?

Also, if the fee is discretionary can the clerk charge this fee on Probate and Civil cases where records maintenance is required, and would the fee apply in Probate proceedings where instruments are filed after the 90 day filing deadlines.

In addition, while the amendment specifically provides that the fee may be used only to provide funds for specific records preservation and automation projects, is it the County Clerk's decision as to what projects the collected fees are used or is the clerk required to obtain Commissioner Court Approval for the expenditure of the collected fee? This problem has arisen because "specific records preservation and automation projects" is not defined in any way. Again is it within the discretion of the clerk to define these projects? Also, can the fee be used to upgrade old record keeping systems or not.

Finally, if the expenditure of the fee is completely discretionary with the County Clerk, is the clerk required to obtain Commissioner Court approval prior to expending any of the fee collected?

This law is obviously brand new, therefore I request that you waive the requirement that I provide you a brief or memorandum, since there will be no reported cases or interpretations of this amendment.

Sincerely,



Vincent J. Messina
Asst. County Attorney

VJM/kw

cc: Anjanette Ables
Hood County Clerk