

March 1, 1994

The Honorable Dan Morales
Attorney General of Texas
P.O. Box 12548
Austin TX 78711-2548

SJS RQ-00701-DM
FILE # ~~11-25035-94~~ 26971
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RQ-701

Dear General Morales:

Pursuant to TEX. GOVT CODE § 402.042, and on behalf of the Railroad Commission, I am requesting your opinion on whether the Commission must pay certain fees requested by county clerks for filing notices required by TEX. NAT. RES. CODE § 89.043(e) to be filed in the county real property records.

The program under which we are filing these 30-day notices of intent to plug delinquent inactive oil or gas wells is a new one; we anticipate filing at least one thousand such notices per year, perhaps substantially more. Under Code § 89.043(e) it is our statutory duty to file these documents, and that of the county clerks to record them in the real property records of the county. We have already had several notices returned to us for enclosure of filing fees, with the amount requested varying from county to county. If they are not recorded, rights of third parties may be affected by the absence of these notices from the real property records.

The filing fees alleged to be owed are sourced in several provisions of the Texas Local Government Code. They are: (1) TEX. LOCAL GOVT CODE §§ 118.011 and 118.013, prescribing the basic \$3.00 per page real property records filing fee; (2) TEX. LOCAL GOVT CODE §§ 118.011 and 118.0216, allowing counties to charge a "records management and preservation" fee of up to \$5.00 for "services performed by the county clerk after the filing and recording of a document in the records of the office of the clerk;" and (3) TEX. LOCAL GOVT CODE § 291.007, authorizing a \$1.00 fee for filing documents not related to a civil case.

With certain exceptions not germane to this request, TEX. LOCAL GOVT CODE § 154.004 prohibits the state from paying a county officer a fee for the "performance of a service" by the officer. It has been construed, *Op. Tex. Att'y Gen. JM-779 (1987)*, to prohibit county clerks from requiring the state to pay a fee for filing abstracts of judgment in the real property records of the county. Letter Opinion No. 93-89, issued October 14, 1993, reaffirms JM-779.

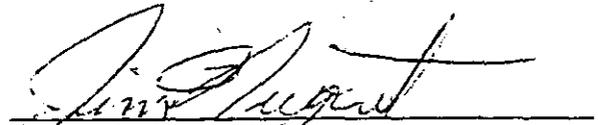
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It is clear in light of JM-779 that the Railroad Commission need not pay the basic \$3.00 fee set by Code §§ 118.011 and 118.013; I believe that we are also clearly exempt from any "records management and disposition" fee that may be set under Code §§ 118.011 and 118.0216, because the latter section plainly describes this fee as being for "services performed by the county clerk."

It is my belief that the Commission is exempt as well from the \$1.00 fee to be collected by the county clerk under Code § 291.007(d) "for filing any document not subject to the security fee [set by Code § 291.007(a)]." While it could have been drafted more precisely, the quoted language, taken on its face, describes an exchange of \$1.00 "for [the service, performed by the county clerk, of] filing" a document; payment of the \$1.00 fee is therefore excused under Code § 154.004.

Your assistance in this matter is appreciated. Please contact Brenda Loudermilk, Special Counsel, at 463-7155 if you require further information on this request.

Sincerely,



James E. (Jim) Nugent

Attachments
ADM/adm

cc: Commissioner Mary Scott Nabers
Commissioner Barry Williamson