



**DAVID BRABHAM**  
**CRIMINAL DISTRICT ATTORNEY**

GREGG COUNTY

101 East Methvin Street, Suite 333  
LONGVIEW, TEXAS 75601  
903-236-8440  
FAX 903-236-8490

*Handwritten:* SJS  
ML-30178-94  
30178

NOV 03 94

October 21, 1994

Opinion Committee

**RO-761**

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

Attention: Opinion Committee

Re: Whether a Municipal Court of Record is required to collect court costs from a defendant, when the court has deferred judicial proceedings against the defendant because that defendant has elected to participate in a Teen Court program under Art. 45.55, Texas Code of Criminal Procedure.

Dear General Morales:

Pursuant to Chapter 30, Subchapter G, Section 30.201 et seq of the Government Code, the City of Longview Municipal Court is a Court of Record and has the power under Art. 45.55, Texas Code of Criminal Procedure, to defer proceedings against a defendant who qualifies under that statute and impose certain conditions which the defendant must satisfy, after which time the Court dismisses the case. In the exercise of these inherent powers of the court and through the Home Rule powers of the City, and pursuant to the referenced statutory authority, the Municipal Court has sanctioned and the City has created a Teen Court Program for youthful offenders.

Historically, since the implementation of the Teen Court program in 1989, the City Attorney with the concurrence of the Municipal Court Judge, has been of the opinion that since participants in the program receive no adjudication of guilt, and because almost every case is eventually dismissed upon completion of Teen Court, the Clerk of the Court is not required to collect the below listed court costs:

October 21, 1994

<u>Statute</u>	<u>Amount</u>
Art. 102.015 C.C.P.	\$ 2.50
Sec. 56.001(b), Gov't Code	1.00
Sec. 415.082(a) Gov't Code	.50
Art. 56.55(a)(2),(3) C.C.P.	15.00/35.00
Art. 102.051 C.C.P.	5.00
Art. 6701h, Sec. 1C(b), VTCS	75.00
Art. 102.081(a), C.C.P.	5.00 (Speeding Cases only)
Art. 102.014(c), C.C.P.	20.00 (School Crossing Offenses)
Art. 6701d, Sec. 143(C), VTCS	3.00

The legal premise for this conclusion is that it would be an unconstitutional denial of due process of law under both the Federal and State Constitutions to impose court costs upon an individual absent an adjudication of guilt; i.e., where there is no conviction of a criminal offense, especially in the case of a juvenile.

The purpose of this letter is to inquire as to whether or not Municipal Courts of Record, such as the City of Longview Municipal Court, that have implemented a Teen Court Program under Art. 45.55, Texas Code of Criminal Procedure, are required to collect court costs from the defendants who participate in such program.

Constitutionally, the rights of juveniles have often been afforded special status; differing procedures have often been applied in the case of juvenile defendants as opposed to adult defendants. For example, a juvenile cannot be placed in jail for failing to appear in court or for failure to pay a fine; also, records relating to juvenile Class C misdemeanor cases are sealed and kept confidential. It would not, therefore, be unlikely that the legislature intended to except those persons (usually juveniles) eligible for Teen Court from the added burden of payment of court costs.

Under Art. 45.55 Texas Code of Criminal Procedure, a Municipal Court of Record may defer proceedings against a person who qualifies under the statute, impose certain conditions which the defendant must satisfy, and ultimately dismiss the case on satisfaction of those conditions subject only to the payment of a discretionary \$10.00 fee "to cover costs of administering this article." [45.55(e)]. This "Teen Court" statute is in marked contrast to Art. 45.54(1), Texas Code of Criminal Procedure, which expressly requires "payment of all court costs." If the Legislature had intended to assess court costs under Art. 45.55, it surely

could have stated that requirement clearly, as it did in Art. 45.54(1).

However, since there is no mention of payment of court costs in the "Teen Court" statute, the presumption is that the Legislature did not require court costs to be paid.

Attorney General Opinion No. JM-1124 gives support for the position that there is a constitutional question concerning the imposition of court costs where a defendant is not adjudicated guilty. That opinion cites AG Opinion JM-880, which stated: "In Texas, costs in misdemeanor criminal cases are assessed as part of the punishment." (p. 8).

Attorney General Opinion No. JM-1124 then held that the imposition of court costs in a proceeding where the defendant is adjudged to be guilty without having entered a plea to the charge or the Court having made an adjudication of guilt deprives the defendant of due process of law and his constitutional right to a trial. (p.9) (emphasis added). The opinion further concluded that the imposition of fees or court costs without a plea, judgment, application or any other adjudication of guilt was unconstitutional:

"We believe that to allow court costs to be assessed upon the basis of a statutory assumption of guilt of a defendant under these circumstances is to deprive the defendant of property without due process of law. Such a procedure allows a conviction to be entered against a defendant without having afforded the defendant his/her constitutional right to a trial."

(A.G. Opinion No. 1124, at p. 7).

Similar conclusions were reached in Letter Opinion No. 93-18, and in Attorney General Opinion JM-917 (1988), where it was determined that a law which requires a defendant to pay a fee in order to obtain the dismissal of a criminal charge of which he or she is innocent violates the Texas Constitution.

A further concern is that the imposition of \$25.00 to \$100.00 in court costs plus an administrative fee of \$10.00 would impair one of the objectives of a Teen Court Program; i.e., making the teenager primarily accountable, since payment of the additional costs and fees would be shifted to the parents. The imposition of additional fees would be a disincentive for teenagers to choose Teen Court.

For the reasons stated, this office is seeking your opinion as to whether or not the imposition of court costs is

October 21, 1994

mandated for Municipal Courts of Record whose youthful defendants participate in a Teen Court Program.

If you have any additional questions regarding this request for opinion, or require additional supplementation, either factual or legal, please do not hesitate to contact me.

Yours very truly,

COUNTY OF GREGG



David Brabham  
District Attorney

DB:ges