



John Sharp

Comptroller of Public Accounts
Austin, Texas 78774

RECEIVED

MAY 01 1995

Opinion Committee

512/465-4000

LBJ State Office
Building

April 21, 1995

RQ-802

RECEIVED

MAY 02 1995

Opinion Committee

The Honorable Daniel C. Morales
Attorney General of Texas
Price Daniel, Sr., Building
209 West 14th Street, 8th Floor
Austin, Texas 78701-1614

SJS
FILE # MC-33347-95
I.D. # 33347

Dear General Morales:

I request your opinion on the allocation priority for payments of certain state court costs and fines. Some background for this request may be helpful to you.

As you know, persons convicted of criminal offenses in this state are required by statute to pay a number of court costs. These court costs include those for the Judicial and Court Personnel Training fund, the Law Enforcement Officers' Standards and Education fund, the Law Enforcement Management Institute, Compensation to Victims of Crime, Crime Stoppers, Breath Alcohol Testing, the Criminal Justice Planning fund, the Juvenile Probation Diversion fund and the Comprehensive Rehabilitation fund, among others. Amounts collected are turned over to the Comptroller for deposit into the appropriate fund in the State Treasury.

The convicted person may also be ordered to pay other fines or fees by the presiding judge. Amounts collected from the payment of these fines and fees are allocated to a variety of purposes, both local and state. Often a convicted person does not or cannot pay all of the court costs and fines that are required by law to be paid or that are assessed by the court. This results in uncertainty as to how to handle the money that is actually received, in cases where only partial payment is made.

My first question is as follows:

In the case of a shortfall in payment, how should the county clerk or district clerk (who collects all these sums) allocate the money that is paid by the defendant? That is, are amounts collected required to be allocated first to costs and fees mandated by statute with any excess allocated to fees assessed for local programs?

In some cases, the trial judge may enter an order that purports to direct the disposition of the money paid in a way that could be construed to be inconsistent with the applicable statute.

The Honorable Daniel C. Morales
April 21, 1995
Page 2

This situation is described in a letter dated January 12, 1995, to me from Criminal District Judge Larry Gist, Chairman of the Judicial Advisory Council to the Texas Board of Criminal Justice and the Community Assistance Division of the Department of Criminal Justice (CJAD). A copy of Judge Gist's letter is attached to this request for your information.

He focuses his concern on the fees to be paid by defendants placed under community supervision. Judge Gist argues that the judge hearing the case retains "full discretion to determine when, how much, how often, and to whom a person on community supervision should pay legally authorized amounts." In support of this position, he cites Articles 42.12, Section 1, and 42.131, Code of Criminal Procedure. I urge you to review Judge Gist's letter to examine the entirety of his legal reasoning.

For 23 years, the Comptroller's Office has taken a different view. This office has relied on the wording of each of the relevant statutes imposing court costs for the funds and programs mentioned at the beginning of this letter. They consistently provide that a person "shall pay" a certain amount as court costs upon conviction of a violation. This language is mandatory. Many of the fees or fines that may be imposed by the trial judge are authorized by statutes that are permissive, using language such as "may impose." For example, see Subsection 11(a) of Article 42.12, Code of Criminal Procedure. It has been this agency's view that costs collected under statutes couched in mandatory terms ("shall pay") have priority over fees imposed under statutes couched in permissive terms, and cannot be waived in favor of them.

Attorney General's Opinion M-1076 (1972) is relevant to both of my questions. That opinion addressed the issue of allocation of court costs, fees and fines when there is a shortfall in payments by the defendant. It stated ". . . where only a part of the fine and costs are collected, such money as collected should go to the payment of the costs and the balance, if any, to the payment of the fine; and where there is not enough collected to pay all of the costs, the money should be pro-rated in view of the fact that no cost had any priority over another." (Emphasis added). This opinion relied on previous Attorney General's Opinions in reaching this conclusion. See also Attorney General Opinion Numbers 0-469 (1939), 0-755 (1939), 0-1792 (1940).

We understand these opinions to stand for the proposition that none of the mandatory costs is subservient to any of the others. On that basis, we have operated under the premise that it would be improper to allow a local option fee to consume money that would otherwise be used to satisfy a mandate of state law.

This agency has applied this concept in administering the collection and reporting of these funds. As noted earlier, this administrative policy has been consistently applied in the Comptroller's audits of State court costs and fines for a number of years. The Legislature has met numerous times since this policy was put in place and has not acted to change it, and this long-standing administrative policy of the Comptroller's Office arguably has been sanctioned by the Legislature.

On the other hand, Judge Gist cites Article 42.12, Section 1, which appears to put great importance on the local probation programs and the fees that may be charged under them. This statute seems to give the presiding judge broad authority and responsibility.

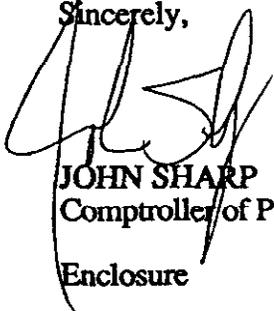
The Honorable Daniel C. Morales
April 21, 1995
Page 3

Thus, my second question is this:

Does a trial judge have authority to order that fees collected be entirely allocated to the program authorized by Article 42.12, Code of Criminal Procedure with the result that no costs or fees or a reduced amount of costs and fees, are collected for the various funds and programs that would otherwise be entitled to receive them?

I would appreciate your prompt response to this request. Thank you for your assistance.

Sincerely,



JOHN SHARP
Comptroller of Public Accounts

Enclosure

cc: The Honorable Larry Gist