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May 14, 1997

The Hon. Dan Morales,
Attorney General of Texas
c/o Opinion Committee
P.O. Box 12548
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Opinion Committee
RD-943

Re: Request for Letter Opinion

Dear General Morales:

Our office represents the State of Texas in many criminal, juvenile, and civil proceedings pending in the courts of our county. These often require the service of citations, subpoenas, or other process in other counties of the state. Until recently, we have been able to rely on Opinion No. MW-447A (1982) to persuade out-of-county sheriffs and constables that the state need not pay security for costs in advance (including filing fees, fees for service of process, etc.), although it may ultimately be responsible for all these costs if the state does not prevail.

Lately, however, an increasing number of officers have been questioning the continued viability of MW-447A (in view of the intervening 15 years of legal developments), and demanding payment of service fees in advance. We are therefore requesting a Letter Opinion of the Attorney General stating whether the conclusions of the prior Opinion are still valid.

MW-447A was based on Article 2072, TEX. REV. CIV. STAT. ANN., which provided, "No security for costs shall be required of the State ... in any action, suit, or proceeding...." Since filing fees are merely security for costs, advance payment could not be required. *Rodeheaver v. Alridge*, 601 S.W.2d 51 (Tex. Civ. App.—Houston 1st 1980), *writ ref'd n.r.e.*; see also Opinion No. MW-470 (1982).

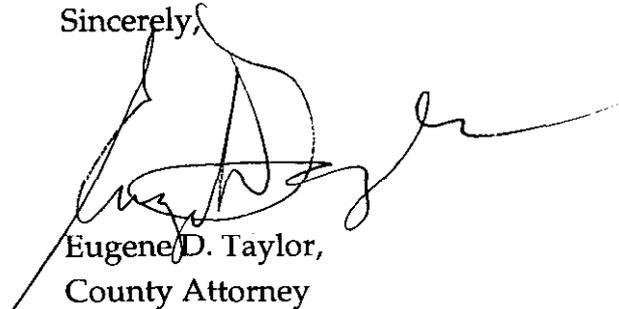
In 1985, Art. 2072 was replaced by § 6.001, TEX. CIV. PRAC. & REM. CODE (*see* Disposition Table, page XVI). That section exempts the state and counties from filing “bond for court costs,” rather than “security for court costs.” However, § 1.001(a) describes the Civil Practice and Remedies Code as a revision of the existing law “without substantive change.” Therefore, no legislative intent to modify the established precedent construing Art. 2072 can be inferred. The Revisor’s Notes to § 6.001 do not suggest any such intent on the part of the Legislative Council when it drafted the new Code. The change in wording may have been due to the combination of provisions formerly found in Arts. 279a, 2072, 2072a, and 2276 (Derivation Table, page XXI).

There do not appear to be any amendments, cases, or opinions after 1985 construing § 6.001 in any way that is inconsistent with the prior construction of Art. 2072. In contrast, related provisions of § 6.001 have been construed according to the established interpretation of the old article. *Dallas Bail Bond Bd. v. Stein*, 771 S.W.2d 577 (Tex. App.—Dallas 1989, *writ denied*); *Dallas Bail Bond Bd. v. Mason*, 773 S.W.2d 586 (Tex. App.—Dallas 1989, *no writ history*). Two recent Attorney General’s Opinions cite MW-447A with apparent approval. DM-250 (1993); DM-360 (1995), footnote 6.

It is thus apparent that the conclusions of MW-447A and MW-470 are still valid. We would very much appreciate a Letter Opinion to that effect, repeating that “the state is not required to pay filing fees for the filing of a case, pay fees for service of citation, or give any other security for costs ... although the state will ultimately be liable for costs should it be the losing party.”

If you have any questions concerning this request, please feel free to call me or my assistant Dale A. Rye, Of Counsel to the County Attorney.

Sincerely,



Eugene D. Taylor,
County Attorney