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MAR 05 2012

OPINION COMMITTEE



RQ-1045-GA

FILE # ML-46972-12

I.D. # 46972

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February 8, 2012

Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
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Dear General Abbott:

Denton County respectfully requests your opinion on the questions set forth in this letter.

In 2011, the Legislature amended article 17.02 of the Code of Criminal Procedure as follows:

DEFINITION OF "BAIL BOND". A "bail bond" is a written undertaking entered into by the defendant and the defendant's [his] sureties for the appearance of the principal therein before a [some] court or magistrate to answer a criminal accusation; provided, however, that the defendant on [upon] execution of the [such] bail bond may deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the bond in lieu of having sureties signing the same. Any cash funds deposited under this article [Article] shall be received for by the officer receiving the funds same and, on order of the court, [shall] be refunded after [to] the defendant [if and when the defendant] complies with the conditions of the defendant's [his] bond, to:

- (1) any person in the name of whom a receipt was issued, in the amount reflected on the face of the receipt, including the defendant if a receipt was issued to the defendant; or
- (2) the defendant, if no other person is able to produce a receipt for the

funds.

A Senate Bill Analysis to the amending bill (H.B. 1658) provides the following statement of intent:

Currently, cash funds deposited for a bail bond are refunded to the defendant if and when the defendant complies with the condition of the bond. H.B. 1658 clarifies that cash funds are required to be refunded to only the defendant who may have initially have deposited the funds for the cash bond.

The amendment's intent is clearly to enable persons who post cash bonds on behalf of a defendant relative or friend to receive the cash refund. Previously, the clerk could disburse these refunds only to the defendant. Unfortunately, the language used in the newly amended provision creates unintended confusion and conflict.

Local Government Code § 117.055 provides, in pertinent part:

(a) To compensate the county for the accounting and administrative expenses incurred in handling the registry funds that have not earned interest, including funds in a special or separate account, the clerk shall, at the time of withdrawal, deduct from the amount of the withdrawal a fee in an amount equal to five percent of the withdrawal but that may not exceed \$50. . . .

(b) A fee collected under this section shall be deposited in the general fund of the county.

The fee provided for in § 117.055 applies to cash bonds, which are placed into the court registry until an order is entered providing for their disposition. When the bond is satisfied and a refund order issued, the clerk withholds the handling fee from the refunded amount. However, article 17.02(1) now provides that cash bonds shall be refunded to "any person in the name of whom a receipt was issued, *in the amount reflected on the face of the receipt.*" The receipt, which is prepared by the officer receiving funds, is issued in the full amount of the original deposit.

We do not believe it was the legislature's intent to make § 117.055 inapplicable to cash bond refunds. In fact, to construe the provision in this way would lead to an untenable result. Article 17.02(2) provides simply that cash bonds shall be "refunded" to the defendant (if no other person is able to produce a receipt). If 17.02(1) is to be construed as prohibiting the deduction of handling fees, then defendants receiving refunds under 17.02(2) will pay handling fees while defendants (and others) receiving refunds under 17.02(1) will not.

Additional concerns exist concerning how to comply with the new provisions of article 17.02, which provides no means of determining when a "person is able to produce a receipt for the funds." In the absence of a court order directing the payment of funds to a specific person, the statute as written leaves the clerks to guess as to when a defendant

described in subsection (2) may receive a refund.

For the reasons set forth above, we seek your opinion on the following questions:

1. If a court orders a cash bond refund, are the requirements of article 17.02(1) met if a clerk withdraws from the registry the amount reflected on the face of the receipt, deducts the handling fee provided for in § 117.005, and refunds the balance to the person in whose name the receipt was issued?
2. May a court include in its refund order instructions to deduct the handling fee provided for in § 117.055? Is this necessary before a clerk may deduct the fee from the amount refunded to a person described in 17.02(1) (a person in whose name a receipt was issued)?
3. Does art. 17.02(2) presume that a receipt was issued in the name of someone other than the defendant?
4. Does art. 17.02(1) require the person named in the receipt (defendant or other named person) to produce his own receipt before the refund will be issued? Or, may the clerk issue a refund to the person named in the (state's copy of the) receipt? If so, what identification, if any, must the clerk require of the named person before issuing the refund?
5. How may the clerk determine when a person is "unable to produce a receipt." For example, is the person entitled to notice of the refund order and an opportunity to claim his refund within a certain time?

Thank you for your consideration of this matter.

Respectfully,



Moira Schilke
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Civil Division