



The Attorney General of Texas

May 18, 1982

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Honorable Henry Wade
Criminal District Attorney
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Opinion No. MW-447A

Re: Clarification of MW-447

Dear Mr. Wade:

This office recently issued Attorney General Opinion MW-447 (1982) in answer to your question concerning the liability of the state for payment of filing fees in civil cases filed with district clerks. This opinion reached the following conclusion:

Article 3912e, V.T.C.S., does not exempt the state of Texas from having to pay filing fees in civil cases filed with district clerks.

Attorney General Opinion MW-447 addressed only the narrow question of whether the state was exempt from filing fees pursuant to article 3912e, V.T.C.S. It did not consider the time at which such payments should be made, nor did it exhaustively consider other provisions which might affect the state's liability for costs. However, in spite of the narrow scope of Attorney General Opinion MW-447, some district clerks have concluded that it requires the state to pay filing fees in advance of receiving any services. It has become necessary to clarify this opinion and to provide answers to inquiries about its scope.

The state is liable for costs in a case where costs are properly adjudged against it as the non-prevailing party, and where no statute exempts it from costs. State v. U.T.L. Aeronautics, Inc., 590 S.W.2d 121 (Tex. 1979), see City of Amarillo v. Paramount Terrace Christian Church of Amarillo, 530 S.W.2d 323 (Tex. Civ. App. - Amarillo 1975, writ ref'd n.r.e.). As already noted, the provisions of article 3912e, V.T.C.S., do not exempt the state from paying filing fees in civil cases. However, article 2072, V.T.C.S., provides in pertinent part:

No security for costs shall be required of the State or of any incorporated city or town... in any action, suit or proceeding....

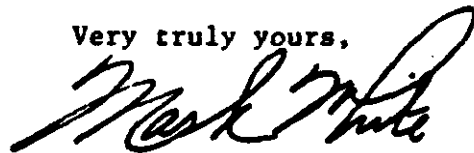
Filing fees are merely "security for costs," so that advance payment of such may not be required. Rodeheaver v. Alridge, 601 S.W.2d 51 (Tex. Civ. App. - Houston [1st Dist.] 1980, writ ref'd n.r.e.). Filing fees were determined by Attorney General Opinion MW-447 to be "costs" for purposes of article 3912e, V.T.C.S. Article 2072 specifically exempts named parties from giving security for costs and constitutes an exception to a general statute dealing with collection of fees by a court clerk. Rodeheaver v. Alridge, supra. Thus, article 3912e does not impliedly repeal article 2072.

In conclusion, 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, including any appellate costs, although the state will ultimately be liable for costs should it be the losing party. See City of Athens v. Evans, 63 S.W.2d 379 (Tex. Comm. App. 1933); Smith v. City of Dallas, 36 S.W.2d 547 (Tex. Civ. App. - Texarkana 1931, writ dism'd).

S U M M A R Y

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Very truly yours,



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