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December 10, 1999

Opinion Committee

The Honorable John Cornyn
Attorney General of Texas
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Dear General Cornyn:

I am writing to request your opinion on two questions relating to the salary supplement program for statutory county court at law judges established under the provisions of Section 51.702, Government Code.

This statute was passed into law by the Texas Legislature in 1991. The statute provides for the collection of additional fees and court costs by counties electing to participate in the program to supplement salaries for the statutory county court at law judges in those counties. The program year runs from July 1-June 30 by statute. Once a resolution is received from a county requesting participation in the program, it is deemed continuing from year to year under Section 51.702(g), Government Code.

This office is responsible for receiving the counties' resolutions seeking admission into the program prior to June 1 of each year and depositing any fees collected by the counties into the state Judicial Fund. We are then required to allocate these funds on a per court basis, disbursing them back to the participating counties for use as salary supplements.

I have two specific questions relating to this program and request your expedited opinion on them:

- 1) May a county that is participating in the program discontinue the collection of the court costs and fees in the middle of the program year?
- 2) If a county discontinues collection of the court costs and fees in the middle of the program year, must the Comptroller's office continue to pay the salary supplement to that county for the remainder of the program year?

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Your office has addressed the question of the constitutionality of the court costs and fees imposed under Section 51.702, Government Code, previously in Attorney General Opinion DM-123 (1992) and, more recently, in JC-0098, issued on August 23, 1999. The first opinion found that the fees and costs would affect certain constitutional rights in that it would result in disparate punishments in different counties in the state for the same criminal offense. As such, General Morales found that the statute must be deemed "constitutionally infirm."

Subsequently, in In re Dorsey Trapp, No. 139,568-B (78th Dis. Ct., Wichita County, Tex. Aug. 24, 1992), Judge Keith Nelson found that Section 51.702, Government Code, was constitutional in its entirety. He ordered that "all costs and fees required to be collected pursuant to Section 51.702 be collected." Due to the district court's order, the Comptroller's office resumed its duties under this statute.

Your most recent opinion, JC-0098, expressed the same concerns about the constitutionality of the statute as did the prior opinion. The recent opinion, however, stopped short of declaring the statute unconstitutional, stating that the opinion of the Office of the Attorney General "is constrained by the contrary decision of the Wichita County district court." Id at p. 4. There are currently two lawsuits pending on this issue in district courts in Travis and Dallas counties questioning the constitutionality of the costs and fees imposed under this provision of the Government Code. There has not yet been a decision on the merits in either case.

The facts raised in the instant situation are that Dallas County has been a participant in the program since July 1, 1992. It is a participant in the current year that runs from July 1, 1999, through June 30, 2000. Our office has been informed by a letter from Dallas County Assistant District Attorney, John B. Cahill, dated December 8, 1999, that the Dallas County Commissioners' Court has passed an order directing the Dallas County Clerk to discontinue the collection of the fees and costs under this program. This order is dated October 5, 1999, but indicates that it is to be effective from October 1, 1999. The Dallas County Clerk's Office has not collected the costs and fees due under this program since that date and has remitted no related funds to this office for the period. (Please see a copy of Assistant District Attorney John Cahill's letter and Dallas County Commissioners' Court Order enclosed for your reference.)

Section 51.702, Government Code, does not contain any provision allowing a county to withdraw from the program in the middle of the program year. The only legal mechanism for discontinuing a county's participation in the program is found in Subsection (h) of the statute. It provides that a commissioners' court that desires to rescind a resolution requesting participation "...must submit it to the comptroller not later than June 1 preceding the beginning of the first day of the state fiscal year the commissioners' court desires to rescind the resolution." (Emphasis added.)

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It appears that by allowing withdrawal from the program under this schedule, the Legislature did not intend that counties be permitted to opt out in the middle of a program year. There may be practical reasons for this restriction in that potential monthly variations in participants could cause sufficient fluctuations in the revenue stream available to the fund to jeopardize adequate funding of the salary supplements.

Additionally, the statute has a mirror provision allowing admission into the program only at a specified time, with some limited exceptions. (See Section 51.702(f), Government Code).

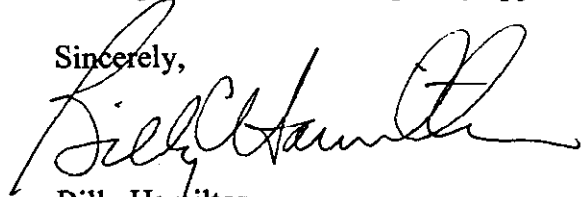
Given the language of Section 51.702, Government Code, can the Dallas County Commissioners' Court withdraw its effective participation in the program in the middle of the July 1, 1999-June 30, 2000 program year?

The Comptroller's office allocates money under the program to the participating counties on a monthly basis. The allocations are made to all counties that are participating in the program during the current program year. The allocation is made on a statewide basis and is owed to a county without regard to the amount of money actually collected in that jurisdiction. Even if there are no cases filed or heard in a participating county during an allocation period, that county is entitled to an allocation payment under the program.

Although there is no statutory language providing a basis for the Comptroller's office withholding payment to a county who fails to comply with its collection duties under Section 51.702, Government Code, must the Comptroller continue to remit the allocation due under the program to such a county?

The next monthly allocation is scheduled to be made by my office the week of December 13, 1999. Given this deadline, an expedited answer from you to both of these questions would be greatly appreciated.

Sincerely,



Billy Hamilton
Deputy Comptroller

Enclosures

c: John Dahill