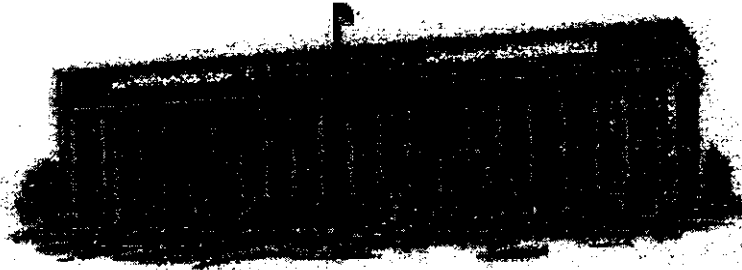


Tom Green County



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OPINION COMMITTEE

CHRISTOPHER G. TAYLOR -- COUNTY ATTORNEY
JUSTICE CENTER
122 W. HARRIS
San Angelo, TX 76903
(325) 659-6562
Fax: (325) 655-6430

FILE # ML-44058-04

December 14, 2004

I.D. # 044058

The Honorable Greg Abbott
Attorney General
Opinions Committee
P.O. Box 12548
Austin, TX 78711-2548

RQ-0301-GA

Re: Request for Attorney General Opinion

Dear Attorney General Abbott:

As county attorney of Tom Green County and in accordance with V.T.C.A., Government Code § 402.043, I am requesting your opinion and submitting a brief regarding the authority of the commissioners court to assign the duty of collecting criminal fines, costs and fees to the deputies of the county treasurer under Article 103.0031 of the Code of Criminal Procedure.

FACTUAL BACKGROUND

In Tom Green County the previous county clerk declined to have a collections department set up through her office. In 1999 the commissioners court created a collections department and set the start date at October 1, 1999. It was placed under the authority of the county treasurer. (See minutes from the September 21, 1999 meeting) With a few exceptions the plan was recorded and adopted as outlined in the Collection Management Mission. (See Attached Document). The collections department is comprised of three county employees who are deputized and bonded under the county treasurer. These deputies collect criminal fines, fees including the time payment fee authorized under V.T.C.A., Government Code § 51.921 and other debts owed to the county. The deputies also act as the cashiers, contrary to the original outline of

the collection program stated in the Collection Management Mission. The money collected by the deputies is deposited into the county treasury in accordance with Article 103.004 of the Code of Criminal Procedure and V.T.C.A., Local Government Code § 113.022.

A dispute has arisen as to whether it is appropriate for the county treasurer or her deputies to collect fees and fines in criminal cases in light of C.C.P. Article 103.003 which does not contemplate the county treasurer as an officer who "may collect money under this title". The current county clerk remains responsible for the reports required under C.C.P. Article 103.009, but must rely on records provided by the collections department to compose the reports because the collections department acts as cashier. The county clerk is also responsible for issuing *capias pro fines* for defendants who are found to be in default of their payment agreement. Concerns about who is ultimately responsible for an error in the report or the erroneous issuance of a *capias pro fine* may have prompted the controversy. Not knowing the liability involved and not being involved in the training of the employees of the collections department, the county clerk now refuses to give consent for these collections or to deputize these employees.

ISSUES PRESENTED

1. Does Article 103.0031 give the commissioners court the authority to create a collections department under the authority of the county treasurer for the purpose of collecting criminal fines and fees? Can the commissioners court create the collections department under the jurisdiction of the county treasurer without the consent of the county clerk?
2. Who defines the clerk of the court? Can the judge of the County Court at Law designate a deputy of the county treasurer as the clerk of the court for purposes of collecting criminal fines and fees?

DISCUSSION OF ISSUE ONE

According to Article 103.003 of the Code of Criminal Procedure, district and county attorneys, clerks of district and county courts, sheriffs, constables and justices of the peace may collect these monies, but this article does not limit the authority of a commissioners court to contract with a private vendor or attorney for collection services. Because the commissioners court has not contracted with a private vendor or a private attorney but has chosen to create a collections department within the purview of the county treasurer without the consent of the current county clerk, it has been argued that the creation of this collections department is outside the statutory guidelines.

On the other hand V.T.C.A., Local Government Code § 113.902 provides that the county treasurer shall direct prosecution for the recovery of any debt and shall supervise the collection of the debt. Case law does not differentiate between the "collection of the debt" and "supervising the collection of a debt", however, the case law seems to indicate that this authority deals strictly with the right to institute suit for a bad debt. See *Generally Hoffman v. Davis*, 100 S.W.2d 94 (Tex. 1937).

The commissioners court has the power to determine the county budget and may thereby influence the actions of other county officials. *Renken v. Harris County*, 808 S.W.2d 222, 226 (Tex. App.-Houston [14th Dist.] 1991, no writ). This budgetary power carries with it broad discretion in making budgetary decisions, but it does have limits. See *Hooten v. Enriquez*, 863 S.W. 2d 522, 528 (Tex. App.- El Paso 1993, no writ). In *Hooten*, a similar dispute arose between

the commissioners court and the county clerk of El Paso and the majority opinion stated that the legislature has vested the county clerk with specific constitutional and statutory authority and any attempt by the commissioners to interfere with those duties was improper. It is the law in Texas that an elected officer occupies a sphere of authority, which is delegated to him by the Constitution and laws, within which another officer may not interfere or usurp. *Pritcard & Abbott v. McKenna*, 350 S.W.2d 333 (Tex. 1961).

Under V.T.C.A., Government Code § 51.921 the law provides, in relevant part:

- (a) In addition to other fees authorized or required by law, the clerk of each district court, statutory county court, county court, justice court, and municipal court shall collect a fee of \$25 from a person who:
 - (1) has been convicted of a felony or misdemeanor; and
 - (2) pays any part of a fine, court costs, or restitution on or after the 31st day after the date on which a judgment is entered assessing the fine, court costs, or restitution.
- (b) Court fees under this section shall be collected in the same manner as other fees, fines, or costs in the case. The officer collecting the fees shall keep separate records of the money collected under this section and shall deposit the money in the county or municipal treasury, as appropriate.

The relevant portion of V.T.C.A., Local Government Code § 113.903 provides:

(a) With the prior consent of the commissioners court and the officer to whom funds are owed, a district, county, or precinct officer authorized by law to receive or collect money or other property that belongs to the county may receive or collect, on behalf of another district, county, or precinct officer, money or property owed to the county.

Although the county clerk does not have exclusive authority to collect under C.C.P. Article 1003.003, it appears that by creating a collections department through the office of the county treasurer without the consent of the clerk, the commissioners court may have interfered with the duties of the clerk as described above in V.T.C.A., Government Code § 51.921 and as described in V.T.C.A., Government Code § 25.0008 which specifically provides that the clerk of the court shall collect the fees and pay them into the county treasury on collection.

DISCUSSION OF ISSUE TWO

The Tom Green County Courts at Law are statutory courts. See V.T.C.A., Government Code § 25.2281. As to the second question, whether a judge in Tom Green County Court at Law may appoint an individual to act as clerk in their courtroom, we believe that this question is first answered in V.T.C.A., Government Code § 25.0010 (b) which states that the county clerk shall serve as clerk of each statutory county court and that the court officials shall perform the duties and responsibilities of their offices and are entitled to the compensation, fees, and allowances prescribed by law for those offices.

This question is also addressed in Op. Tex. Att'y Gen. MW-322 (1981). This opinion holds that since statutes indicate that both the sheriff and county clerk have authority and responsibilities in the collection of fines, the court is authorized to direct a defendant to pay the amount of the fine to either of those officers. This opinion clearly indicates that the judge is confined in this decision to those officers who have already been granted the authority to collect by statute.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Taylor", with a long horizontal line extending to the right.

Chris Taylor
County Attorney
Tom Green County

Xc: Michael D. Brown, County Judge
Elizabeth McGill, County Clerk
Dianna Spieker, County Treasurer