

RECEIVED

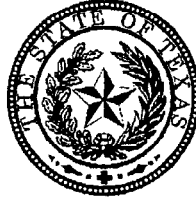
DEC 21 2005

OPINION COMMISSION

RECEIVED

DEC 20 2005

OPEN RECORDS DIVISION



BRUCE ISAACKS
CRIMINAL DISTRICT ATTORNEY

CIVIL DIVISION

Thomas F. Keever, *Chief*
David L. Finney
Hugh Coleman
John Feldt
Brody Shanklin

1450 East McKinney, Suite 3100
P. O. Box 2850
Denton, Texas 76202
(940) 349-2750
Fax (940) 349-2751

RQ-0425-GA

December 15, 2005

FILE # ML-44530-05

I.D. # 44530

CERTIFIED MAIL: 7000 0520 0024 6296 9213

Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Attorney General Opinion
Administrative Fee for Cash Bail Bonds

Dear General Abbott:

I am seeking guidance from your office regarding the statutory interpretation of Tex. Loc. Gov't Code Ann. §§ 117.052 and 117.055. Attorney General Cornyn addressed these statutes in Op. Tex. Att'y Gen. JC-0163 (December 29, 1999), and concluded that a county or district clerk is authorized to "withhold an administrative fee from the return of funds deposited with the clerk as a cash bail bond pursuant to article 17.02 of the Code of Criminal Procedure." Op. Tex. Att'y Gen. JC-0163 (December 29, 1999). This opinion is limited to clerks who deposit cash bond funds into non-interest bearing accounts. JC-0163 at 2. JC-0163 concedes that the Texas Code of Criminal Procedure and the Local Government Code are in conflict. The Code of Criminal Procedure provides that "[a]ny cash funds" deposited as bail shall be refunded to the defendant. Tex. Code Crim. Proc. Ann. art. 17.02 (Vernon 1977). The AG reasons that neither code is more specific or general than the other on the topic of cash bail bonds. Op. Tex. Att'y Gen. No. JC-

0163 (December 29, 1999). He further reasons that the statute of later date prevails. Id. and see Tex. Gov't Code Ann. § 331.025 (Vernon 1998).

JC-0163 was written on December 29, 1999, and Local Government Code § 117.055 was amended in 1998. On April 29, 1999, the Texas Supreme Court, in a unanimous opinion, addressed the issues of cash bail bonds, the Local Government Code, the Property Code, and the transfer of cash funds. Melton v. State, 993 S.W.2d 95 (Tex. 1999). It appears that JC-0163, in approving the fee from cash bail bonds, wholly failed to address Melton. The Supreme Court concluded that cash bail bonds were registry funds under the control of the clerks. Melton at 97. The Court also decided that cash bail bond funds fell under the auspices of the Property Code for purposes of escheat. Melton at 99-100. However, when the Court addressed the release of cash bail bond funds, it gave preference to the specific nature of Code of Criminal Procedure art. 17.02 over the general provisions of the Property Code. "If a general provision conflicts with a specific provision, they should be construed, if possible, so that effect is given to both [cite omitted]. When one statute deals with a subject in comprehensive terms, like section 74.301(a) of the Property Code, and another deals with a portion of the same subject in a more particular way, like article 17.02 of the Code of Criminal Procedure, the specific will prevail. See Tex. Gov't Code § 311.026(b). Because article 17.02 speaks specifically to the release of cash bail bonds, it controls over the more general Property Code provisions" Melton at 103.

Local Government Code § 117.055 deals generally with "registry funds that have not earned interest" and requires a fee deduction upon withdrawal. Tex. Gov't Code Ann. § 117.055 (Vernon Supp 2003). Article 17.02 deals specifically with cash bail bonds. JC-0163's conclusion that article 17.02 of the Code of Criminal Procedure is not more specific than Local Government Code § 117.055 appears to be in conflict with the Supreme Court's finding in Melton. JC-0163 also fails to address the issue that the substantive bond forfeiture law is criminal in nature, but follows the Rules of Civil Procedure. Tex. Code Crim. Proc. Ann. § 22.10 (Vernon 2001); Dees v. State, 865 S.W.2d 461 (Tex. Crim. App. 1993); and Williams v. State, 707 S.W.2d 40 (Tex. Crim. App. 1986). Since bail bonds and their administration are criminal in nature, criminal codes take precedence over civil codes. Camacho v. Samaniego, 831 S.W.2d 804 (Tex. 1992). A brief review of the statutes themselves reveals that § 117.055 speaks to registry funds in general. Article 17.02, however, deals directly with cash bail bonds rather than a general reference to all "registry funds".

Please address the apparent conflicts between JC-0163 and Melton regarding a county and district clerk's ability to charge an administrative fee on cash bail bonds under current statutes and common law.

Thank you for your time and consideration in this matter. If you need any additional information to make a determination in this case, please do not hesitate to call. Best Regards.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Isaacks", with a long horizontal flourish extending to the right.

Bruce Isaacks
Denton County Criminal District Attorney