

The State of Texas
House of Representatives

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OPINION COMMITTEE



FILE # ML-46833-11
I.D. # 46833

Jim Jackson
DISTRICT 115

RQ-1000-GA

September 29, 2011

The Honorable Greg Abbott
Attorney General of the State of Texas
Attn: Jason Boatright, Chair
Opinion Committee
P. O. Box 12548
Austin, Texas 78711-2548

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Re: Request for Opinion regarding Service Fee

Dear General Abbott:

This letter is written to request your opinion on a matter of Texas law regarding a consumer transaction at an establishment such as a fast food restaurant. The issue involves such an establishment charging an itemized "Service Fee" and offering a "Cash Discount" in connection with a consumer transaction in this state. The law seems to be clear that offering a "Cash Discount" is acceptable in Texas. 15 U.S.C. §1693o-2(b)(2)(Supp. I 2010); *U.S. et al. v. American Express Co., et al.*, In the United States District Court for the Eastern District of New York (Final Judgment at p. 6, para. IV.A.1) (prohibiting restraints on Merchants from offering Customer discount for paying with cash) .

I seek your opinion on whether or not Texas law also permits an establishment such as a fast food restaurant to charge an itemized and disclosed "Service Fee" in connection with a purchase by a consumer. The service fee will be for a small, fixed amount and will not be percentage based.

I am attaching examples of such a Service Fee.

- Example 1 is an example of the disclosure of the Service Fee and Cash Discount that is placed on the consumer's side of the cash register.
- Example 2 is an example of a register receipt that reflects a 40 cent Service Fee charged in connection with a cash purchase above \$10. (This example includes a separate 50 cent discount for paying with cash).

- Example 3 is an example of a register receipt that reflects a 40 cent Service Fee charged in connection with a credit card purchase above \$10. (This example does not include a discount for paying with cash because the purchase is by credit card).

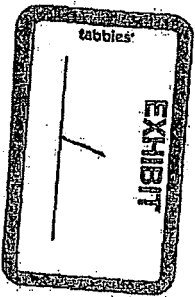
Your attention to this matter is greatly appreciated. Please do not hesitate to contact Ryan Fisher in my Capitol Office if you have any questions regarding this request.

Best regards,

A handwritten signature in black ink, appearing to read "Jim", written in a cursive style.

Jim Jackson
State Representative
District 115
Chair, House Committee on Judiciary and Civil Jurisprudence

40¢ Service Fee on all Sales over \$10
50¢ Cash Discount on Cash Sales over \$10

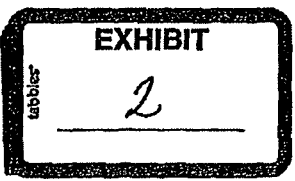


07/10/2011
Server: Super
Check 100123

1:43:23 PM

1 Single	4.79
Sm Fries	
2 Chk Grill	11.78
1Sm Combo	
Sm Fries	
Sm Coke	
SubTotal	16.57
Tax	1.06
Srv Fee	0.40
Total	18.03
Discount	-0.50
Balance Due	17.53
Cash Tender	20.00
Change	2.47

Your Order Number is
123



8/19/2011
Server: Super

1:42:51 PM

Check 100122

1 Single	4.79
Sm Fries	
2 Chk Grill	11.78
Sm Combo	
Sm Fries	
Sm Coke	

Sub Total	16.57
Tax	1.06
Srv Fee	0.40
Total	18.03
Master Card	18.03
Acct:XXXXXXXXXX0007	
AuthCode:888888	

Your Order Number is

122

