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OPINION COMMITTEE

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Re: Request for an opinion regarding commissions on bond forfeitures collected by a District Attorney

Dear General Abbott:

I am requesting your opinion regarding the authority of a District Attorney to retain a commission on monies collected through bond forfeiture proceedings. The questions presented are:

1. Does Section 41.005 of the Government Code authorize a District Attorney to retain the therein stated percentages of amounts collected by his office on bond forfeitures as a commission?
2. If authorized, is such a commission subject to the approval of the Commissioners' Court?
3. If authorized, into which county fund is such a commission properly deposited and for what purpose may it be used?

Background

The Fannin County Criminal District Attorney's Office prosecutes all bond forfeiture cases arising in Fannin County, collects the forfeitures from cash bonds and sureties, as applicable, and deposits the proceeds with the appropriate officer. Currently, all forfeited amounts are deposited into the general fund of the county. This office believes that Gov't. Code §41.005 authorizes the retention of the therein stated percentages of amounts collected as a commission and that such retention is not subject to the approval of the Commissioners' Court. This office is uncertain as to which county fund such commissions should be deposited into, but believes they should be treated similarly to asset forfeiture funds and used for the official purposes of the office. The Commissioners' Court has expressed the belief that they have the sole authority to approve whether or not this office may collect commissions and the further belief that all money collected must be deposited into the county's general fund.

Legal Arguments and Authorities

TEX. GOVT. CODE ANN. §41.005 is a codification of former articles 335 and 337 V.T.C.S. §41.005(b) states that “[t]he district or county attorney may retain a commission from money collected for the state or a county.” Forfeitures on bail bonds are payable to the state. *See* TEX. CODE CRIM. PRO. ART. 22.02 (2012). Amounts collected on bond forfeitures thus appear to be money collected for the state or county and would therefore be subject to a commission. §41.005 is silent as to the necessity of the Commissioners’ Court in granting permission to a District Attorney to retain commissions under that section. *See* TEX. GOVT. CODE ANN. §41.005 (2012). The Code Construction Act defines “may” as creating discretionary authority or granting permission or a power. TEX. GOVT. CODE ANN. §311.016 (2012). It thus appears that a District Attorney is granted discretionary authority by statute to retain commissions on money collected and that such authority is not dependent upon a grant of authority or approval from the Commissioners’ Court of a county.

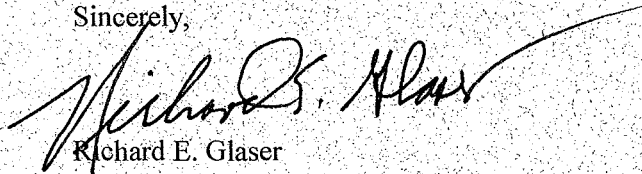
The Texas Constitution states that fees earned by district officers shall be paid into the county treasury for the account of the proper fund. TEX. CONST. ART. XVI, §61. The Code of Criminal Procedure establishes funds for the use of the District Attorney’s office for official purposes, such as the asset forfeiture fund and the hot check fund, but does not specify what shall be done with commissions. *See* TEX. CODE CRIM. PRO. ART. 59.06, 102.007 (2012). Likewise, Chapter 41 of the Government Code is silent as to the proper disposition of commissions retained on funds collected or for what purposes they may be used. Commissions on bond forfeitures collected by a District Attorney seem comparable to asset forfeitures and hot check fees in that they are proceeds of actions initiated and prosecuted by the District Attorney’s office. It thus seems reasonable to use them in a manner comparable to the uses of other funds retained by the District Attorney, namely, for the official purposes of the office.

Conclusion

I request your assistance in determining whether bond forfeitures are subject to the commissions as described in §41.005, whether such commissions are subject to the approval of the Commissioners’ Court, and into which county fund such commissions must be deposited. Additionally, I request your opinion regarding permissible purposes for the use of such commissions.

I respectfully request your opinion regarding these issues.

Sincerely,



Richard E. Glaser
Fannin County Criminal District Attorney