

**COOKE COUNTY AUDITOR**  
**COOKE COUNTY COURTHOUSE**  
**101 S. DIXON STREET**  
**GAINESVILLE, TEXAS 76240**  
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RQ-0261-KP

December 18, 2018

Attorney General Ken Paxton  
P.O. Box 12548  
Austin, TX 78711-2548

FILE # ML-48469-18  
I.D. # 48469

Re: Request for Attorney General Opinion

Dear Attorney General Paxton:

Pursuant to 402.042 and 402.043 of the Texas Government Code, I respectfully request your formal written opinion on the following question:

May a private attorney, or a collection agency, who has contracted with a county to collect amounts owed to a county's court, charge a fee for the use of credit cards by the defendant to pay those debts?

I am also providing supporting information, which includes a background and related opinion from the Texas Attorney General, applicable statutes, and documentation.

**BACKGROUND**

Pursuant to 103.001 of the Texas Code of Criminal Procedure, a county may contract with a private attorney, or collection agency, to collect delinquent receivables owed to its courts. In conducting the collection activities for a county, the collection vendor is sometimes asked to accept credit card payments from individuals wanting to pay their debts. Texas Business and Commerce Code Section 604A.0021 prohibits the imposition of a surcharge for use of a credit card. It states:

- (a) In a sale of goods or services, a seller may not impose a surcharge on a buyer who uses a credit card for an extension of credit instead of cash, a check, or a similar means of payment.
- (b) This section does not apply to:
  - (1) a state agency, county, local governmental entity, or other governmental entity that accepts a credit card for the payment of fees, taxes, or other charges; or
  - (2) a private school that accepts a credit card for the payment of fees or other charges, as provided by Section 111.002.

(c) This section does not create a cause of action against an individual for violation of this section.

**ATTORNEY GENERAL OPINION KP-0095**

In RQ-0084-KP, the Honorable James Keffer questioned "whether a service fee for online payments is permitted and not a surcharge so long as it applies to all forms of online payment (credit, debit, ACH, electronic funds transfer or other electronic payment format) and does not single out credit or debit card payments[.]" In KP-0095, your office determined in part:

If a third-party vendor is separate from the owner or operator and uniformly charges a fee to customers for all means of electronic payments, then the vendor has a uniform price that would not violate the surcharge statutes. If, however, a court viewed the vendor and owner or operator to be the same entity, then the seller or merchant would be charging two prices: one for electronic methods of payment and one for in-person methods of payment.


It is language that raises the question presented in this request. The opinion in KP-0095 appears to make the distinction that if the third-party vendor is separate from the owner or operator and uniformly charges a fee, no violation of the surcharge act would occur.

In the situation I pose, the collection vendor would likely be considered a third-party since they are performing collection services for the county, but are not the same entity. Further, the collection vendor would apply the fee to all forms of electronic payments it receives.

Additionally, a Texas county is one of the entities specifically exempted from the statute in Section 604A.0021(b)(1). Does it logically follow that a private attorney, or collection vendor, attempting to collect a fee, tax or other charge owed to a state agency, county, local governmental entity, or other governmental entity should possess the same exemption from the surcharge prohibition?

On Behalf of Cooke County, Texas, thank you for your time and assistance in this matter.

Sincerely,



Shelly Atteberry  
Cooke County Auditor