



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**CRAWFORD C. MARTIN  
ATTORNEY GENERAL**

June 13, 1972

Honorable Ned Granger  
County Attorney  
Travis County Courthouse  
P. O. Box 1748  
Austin, Texas 78767

Opinion No. M-1161

Re: Whether the Comptroller of Public Accounts is authorized and/or required to pay court costs incurred by the State while prosecuting cases in Travis County courts even though the Governor, exercising his legislative function, has vetoed the court cost appropriation of the Attorney General's Office for the current year.

Dear Mr. Granger:

We quote the following excerpt from your letter requesting an Opinion of this Office on the above captioned matter:

" . . . The Court cost appropriation of the Attorney General's office for the current year was vetoed by the Governor . . . .

" . . . the Comptroller of Public Accounts refuses to reimburse Travis County for the large amount of court costs for State cases which have accumulated since the beginning of this fiscal year (now over \$32,000).

"It would appear that the Comptroller definitely has such authority. On page III-36, Section 17 of the Comptroller of Public Accounts' appropriation there is an appropriation of over \$3,000,000<sup>1</sup> for 'Consumable

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<sup>1/</sup> \$3,698.090 is the exact amount appropriated for fiscal year 1971.

supplies and materials, current and recurring operating expense and capital outlay.' On page III-39 of this appropriation, it is stated: "Consumable supplies and materials, current and recurring operating expense and capital outlay" shall include expenses for tax enforcement purposes, court costs, . . .'"

At the outset, we have assumed that the court costs in question were incurred in tax suits instituted by the Attorney General at the request of and on behalf of the Comptroller of Public Accounts. This we do because the law is well settled that an appropriation for a given purpose is valid only if made in pursuance of a valid statute. We deem it unnecessary to enumerate the various State tax statutes<sup>2</sup> which impose the duty of enforcing and collecting State taxes upon the Comptroller and require the Attorney General to bring suit when necessary for such enforcement and collection.

It is true that the situation which you have presented by your request is unique in Texas history in that never before has a Governor of this State vetoed in toto a court costs item in the general appropriation for the Attorney General's Office; and that but for such veto, the payment of the court costs in question would also be authorized under this vetoed item. However, the Legislature additionally authorized payment of the costs in question by including "court costs" in the above quoted portion of the general appropriation for the Comptroller's Department.

The Comptroller of Public Accounts has a mandatory duty to collect delinquent taxes, and those which require court action are collected by the filing of suits by the Attorney General of Texas at the specific request of the Comptroller.

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2/ Vol. 20A, Taxation-General, V.A.C.S.

A necessary incident to the filing and disposition of any suit by the State of Texas as a plaintiff is that the State cast off its robes of sovereign immunity and stand in court as any other party or litigant.<sup>3</sup> As a party to a civil suit, the State of Texas is liable for the costs taxed against it as would be any other party to the suit.<sup>4</sup> The Texas Rules of Civil Procedure, Nos. 125 and 127, requiring that the parties pay the court costs taxed against them, have the same force and effect as a statute.<sup>5</sup> And while no security for costs<sup>6</sup> is required of the State, this does not lessen the duty of the State as a plaintiff to pay its costs where the costs are taxed against it.

The situation here presented is one where court costs would have been payable out of either the Attorney General's funds or those of the Comptroller, but for the Governor's veto

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3/ 52 Tex.Jur.2d, State of Texas, Section 58, page 777; Schleicher Co. v. Hudgens, 255 S.W.2d 927 (Tex.Civ.App. 1952); Harris v. O'Connor, 185 S.W.2d 993 (Tex.Civ.App. 1944, ref. w.o.m.)

4/ Texas Company v. State, 281 S.W.2d 83 (Tex.Sup. 1955); 15 Tex.Jur.2d, Costs, Sec. 3, page 6 and Sec. 13, page 21; Rules 125 and 127 (Texas Rules of Civil Procedure; Dupree v. State, 107 S.W. 926 (Tex.Civ.App. 1908, no writ hist.) Malone v. State, 107 S.W. 927 (Tex.Civ.App. 1908, no writ hist.); Reed v. State, 78 S.W.2d 254 (Tex.Civ.App. 1934, writ disp.)).

5/ Freeman v. Freeman, 160 Tex. 148, 327 S.W.2d 428 (Tex.Sup. 1959); Pearl Assur. Co. v. Williams, 167 S.W.2d 808 (Tex. Civ.App. 1943, no writ hist.)

6/ Art. 2072, V.C.S.

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of the Attorney General's court cost item, and the veto of the one by the Governor did not prevent the payment of court costs by the administrative agency, the Comptroller in this instance. Attorney General's Opinion No. M-1105 (1972).

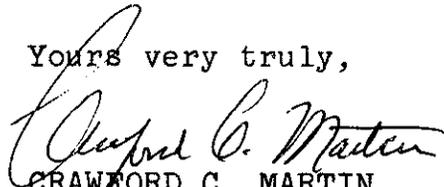
It is the opinion of this office that payment of court costs due Travis County for the filing of delinquent tax suits could and should be paid by the Comptroller if he has sufficient unencumbered funds in his appropriation to pay such costs.

You are therefore advised that it is the opinion of this Office that the Comptroller should pay court costs incurred by the Attorney General in State tax cases from funds appropriated to his Department by Item 17 of the current General Appropriation Act.

S U M M A R Y

The Comptroller of Public Accounts is authorized, and it is his duty, to pay court costs for State tax cases prosecuted by the Attorney General at the request of the Comptroller, such payment to be made under Item 17, ch. III, p. 36 of the current General Appropriation Act, or other appropriate fund.

Yours very truly,

  
CRAWFORD C. MARTIN  
Attorney General of Texas

Prepared by John R. Grace  
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APPROVED:  
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