



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

April 26, 1994

Honorable José R. Rodríguez
El Paso County Attorney
County Courthouse
500 East San Antonio, Room 203
El Paso, Texas 79901

Letter Opinion No. 94-042

Re: Whether section 291.007 of the Local Government Code authorizes El Paso County to collect as a court cost a security fee for cases filed in the county probate court and related questions (ID# 23372)

Dear Mr. Rodríguez:

You have asked the following three questions:

1. Does Section 291.007 of the Texas Local Government Code authorize El Paso County to collect a security fee for cases filed in the Probate Court of El Paso County?
2. Does Section 152.004(a) of the Texas Civil Practice and Remedies Code authorize El Paso County to collect a court cost for the Alternative Dispute Resolution Fund for cases filed in the Probate Court of El Paso County?
3. Does Section 323.023(a) of the Texas Local Government Code authorize El Paso County to collect a court cost for the Law Library Fund for cases filed in the Probate Court of El Paso County?

Section 25.0731(b) of the Government Code creates one statutory probate court in El Paso County.

We will first answer your third question, regarding section 323.023(a) of the Local Government Code. Section 323.023(a) requires a clerk to collect as costs a sum not to exceed \$20 "in each civil case filed in a county or district court, except suits for delinquent taxes," if the commissioners court has set such a cost. The clerk must remit the money to the county treasurer, who is to deposit it into the county law library fund, which the county may use "only for the purpose of establishing the law library after the entry of the order creating it or for the purpose of purchasing or leasing library materials, maintaining the library, or acquiring furniture, shelving, or equipment for the library." Local Gov't Code § 323.023(b).

This office long has held that the sum designated to support the county law library should be collected in probate proceedings, including those in probate court. See

Attorney General Opinions H-725 (1975); V-1071 (1950); V-292 (1947); O-3957 (1941). These opinions are dispositive of your third question.¹

To answer your first question, we refer you to Attorney General Opinion DM-283 (1994) at 6-7, which resolves your question. In that opinion this office considered "whether, in Harris County, the clerk must collect a security fee (assuming the commissioners court has assessed such a fee pursuant to section 291.007(a) of the Local Government Code) on civil cases filed in the probate court, as well as in the county court, the county court at law, and the district court." The opinion framed the issue as follows:

Whether a clerk may collect a security fee on a probate case filed in a statutory probate court or another statutory court exercising the jurisdiction of a probate court will depend on the resolution of two issues: first, whether a probate case is a "civil case" for purposes of section 291.007 of the Local Government Code; and second, whether we should interpret the list of clerks of court authorized to collect the security fee to include clerks of statutory probate courts.

Id.

Attorney General Opinion DM-283 found that a probate case is a civil case for purposes of section 291.007 of the Local Government Code and that the list of clerks section 291.007 authorizes to collect the security fee should include clerks of statutory probate courts. *Id.* at 7; *see* Attorney General Opinions H-725; O-3957. We concluded as follows:

Normally, therefore, any county court, county court at law, or district court with jurisdiction over a probate matter must charge a security fee on any probate case filed in the court (assuming the commissioners court in that county has imposed the security fee). In our opinion, the legislature did not intend to differentiate between a probate case filed in county court, county court at law, or district court and a probate case filed in a statutory probate court or another statutory court exercising the jurisdiction of a probate court. [Footnote omitted; citations omitted.] Consequently, we interpret section 291.007 of the Local Government Code to require a clerk, in a county in which the commissioners court has assessed a security fee, to collect a security fee on all probate cases, regardless of the particular court in which the case is filed.

¹Certain matters before a probate court are not subject to the law library charge. *See* Attorney General Opinion H-725 (1975) at 2; V-292 (1947) at 3.

Id. We therefore conclude that section 291.007 of the Local Government Code authorizes El Paso County to collect a security fee for civil cases filed in probate court.

Finally, we turn to your second question, regarding the alternative dispute resolution fund that section 152.004(a) of the Civil Practice and Remedies Code authorizes a county to collect. Section 152.004(a) authorizes a commissioners court "[t]o establish and maintain an alternative dispute resolution system" by setting "a court cost in an amount not to exceed \$10 to be taxed, collected, and paid as other court costs in each civil case, except suits for delinquent taxes, filed in a county or district court in the county." The language of section 152.004(a) tracks the language that the legislature used in both sections 291.007(a) and 323.023(a) of the Local Government Code. Moreover, a probate court judge may refer a case for alternative dispute resolution. Civ. Prac. & Rem. Code § 152.003. We interpret section 152.004(a) of the Civil Practice and Remedies Code consistently with sections 291.007(a) and 323.023(a) of the Local Government Code; we conclude, therefore, that section 152.004(a) authorizes a clerk to collect as a court cost a fee not to exceed \$10 for the alternative dispute resolution system fund in civil cases filed in probate court (assuming that the commissioners court has authorized the clerk to exact such a fee).²

²In your letter to this office, you appear to contend that under the definitions provided in section 21.008(2) of the Government Code a statutory probate court is distinct from other county courts; thus, a clerk may not collect a charge for a civil case filed in probate court unless the statute authorizing the charge explicitly imposes the charge on cases filed in probate court. In 1989 the legislature renumbered the section 21.008 that you quote as section 21.009. See Acts 1989, 71st Leg., ch. 2, § 16.01(18), at 198. Section 21.009(2) defines "statutory county court" for purposes of title 2 of the Government Code to exclude "statutory probate courts as defined by Section 3, Texas Probate Code." Title 2 of the Government Code provides for the jurisdiction of the various courts, among other things. Your question does not involve matters within the scope of title 2; consequently, the definitions in title 2 do not necessarily apply to our consideration of whether, for purposes of section 152.004(a) of the Civil Practice and Remedies Code and sections 291.007 and 323.023(a) of the Local Government Code, a statutory probate court is excluded from the term "county court." Moreover, in the context of other legal provisions, probate court and county court are not mutually exclusive. See, e.g., Tex. Const. art. V, § 16; Gov't Code § 25.0003(e); Prob. Code § 4.

S U M M A R Y

Section 291.007(a) of the Local Government Code authorizes a clerk to collect a security fee for civil cases filed in probate court if the commissioners court has set such a fee. Section 152.004(a) of the Civil Practice and Remedies Code authorizes a clerk to collect a charge for the alternative dispute system fund in civil cases filed in probate court if the commissioners court has set such a charge. Section 323.023(a) of the Local Government Code authorizes a clerk to collect a charge for the law library fund in civil cases filed in probate court if the commissioners court has set such a charge.

Yours very truly,



**Kimberly K. Okrogge
Assistant Attorney General
Opinion Committee**