



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

DAN MORALES
ATTORNEY GENERAL

February 29, 1996

The Honorable Ben W. "Bud" Childers
Fort Bend County County Attorney
309 South Fourth Street, Suite 621
Richmond, Texas 77469

Letter Opinion No. 96-023

Re: Investment of county funds governed
by chapter 117, Local Government Code,
and related questions (ID# 35721)

Dear Mr. Childers:

You inquire about the interaction of chapter 117 of the Local Government Code, which relates to funds deposited with a court pending the outcome of a legal proceeding, and chapter 2256 of the Government Code, the Public Funds Investment Act. Section 2256.003 of the Government Code, as amended by the Seventy-fourth Legislature, provides in part:

Each governing body of the following entities may purchase, sell, and invest its funds and funds under its control in investments authorized under this subchapter in compliance with investment policies approved by the governing body . . . :

(1) a local government

Act of May 18, 1995, 74th Leg., R.S., ch. 402, § 1, 1995 Tex. Sess. Law Serv. 2958, 2959. "Local government" is defined to include a county. Gov't Code § 2256.002, *amended by* Act of May 18, 1995, 74th Leg., R.S., ch. 402, § 1, 1995 Tex. Sess. Law Serv. 2958, 2958. Thus, section 2256.003 applies to funds owned by and under the control of a county commissioners court.

You state that the clerks of the district and county courts in Fort Bend County place funds in a depository pursuant to chapter 117 of the Local Government Code, rather than having them invested pursuant to section 2256.003 of the Government Code. You wish to know how chapter 117 of the Local Government Code can be harmonized with section 2256.003 of the Government Code.

Subchapter B of chapter 117 authorizes the commissioners court to select a depository for trust funds held by county and district clerks. If the commissioners court has selected a depository, section 117.052 provides that

a county or district clerk who is to have for more than three days legal custody of money deposited in court pending the result of a legal proceeding shall deposit the money in the depository.

The funds deposited under this provision are to be carried as a trust fund account in the name of the clerk. Local Gov't Code § 117.052. A "trust fund" within chapter 117 of the Local Government Code has been defined as "an equitable obligation under which the trustee is required to deal with the trust property for the benefit of the beneficiaries who have a vested interest in the trust funds." Attorney General Opinion H-183 (1973); *see also* Attorney General Opinion JM-1162 (1990). Trust funds subject to deposit pursuant to section 117.052 include civil court deposits, probate court deposits, child support payments paid through the clerk's office, interpleader funds, supersedeas deposits, funds paid in satisfaction of judgments, and eminent domain deposits. Attorney General Opinion H-183 (1973); *see also* Attorney General Opinion JM-1162 (1990). The clerk may not draw a check on the trust funds except to pay a person entitled to the funds, under order of the court in which the funds were deposited.¹ Local Gov't Code § 117.053.

A sum of money placed in the county trust fund depository is not owned by the county but is only held in trust for the litigant who establishes his or her right to it. *Sellers v. Harris County*, 483 S.W.2d 242 (Tex. 1972); *see* Local Gov't Code § 117.083 (if trust funds placed in depository are lost, county is liable to their rightful owner for full amount). The funds are controlled by the clerk subject to the orders of the court. The trust funds are not funds belonging to the county or controlled by the commissioners court within section 2256.003 of the Government Code; and, accordingly, they are not subject to investment pursuant to chapter 2256 of the Government Code. Money deposited in the court pending the result of a legal proceeding must be deposited and handled in compliance with chapter 117 of the Local Government Code.

You also inquire about the interaction between section 2256.003 of the Government Code and the following amendment to the Public Funds Investment Act adopted by the Seventy-third Legislature in 1993:

The county tax assessor-collector may use electronic means to transfer or invest ad valorem taxes collected on behalf of the county, as well as pursuant to a contact with other taxing units.

Act of May 7, 1993, 73d Leg., R.S., ch. 181, § 1, 1993 Tex. Gen. Laws 369, 369 (italics removed). As we will explain, this provision has been repealed.

The above-quoted provision was adopted as an amendment to former article 842a-2, V.T.C.S., by the same session of the legislature that repealed article 842a-2, V.T.C.S., and re-enacted it without substantive change as chapter 2256 of the

¹There are exceptions to the prohibition against drawing a check on the trust funds except to pay a person entitled to the funds. If the commissioners court chooses a new depository, section 117.053(a) of the Local Government Code authorizes the clerk to transfer the trust funds from the old depository to the new depository. Section 117.002 provides that trust funds presumed abandoned under law shall be delivered by the county or district clerk to the state treasurer without further action by any court. *See* Attorney General Opinion DM-348 (1995).

Government Code. Act of May 4, 1993, 73d Leg., R.S., ch. 268, §§ 1, 46, 1993 Tex. Gen. Laws 587, 988. It was codified as Local Government Code section 113.007 by Senate Bill 959 of the Seventy-fourth Legislature, the "clean-up" bill that incorporated into the codes enacted by the Seventy-third Legislature amendments to the repealed and recodified statutes adopted by that legislature. Act of April 25, 1995, 74th Leg., R.S., ch. 76, § 1.01, 1995 Tex. Sess. Law Serv. 458, 458.

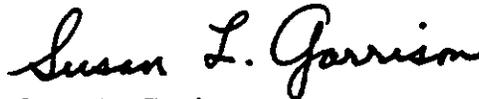
However, the Seventy-fourth Legislature also adopted House Bill 2459, revising the Public Funds Investment Act, and this bill repealed the 1993 amendment authorizing the county tax assessor-collector to "use electronic means to transfer or invest ad valorem taxes collected on behalf of the county." Act of May 18, 1995, 74th Leg., R.S., ch. 402, § 5, 1995 Tex. Sess. Law Serv. 2958, 2970.² House Bill 2459 expressly "controls over Senate Bill 959 to the extent of any conflict." *Id.* § 6, at 2970; *see* Act of April 25, 1995, 74th Leg., R.S., ch. 76, § 1.02, 1995 Tex. Sess. Law Serv. 458, 458 ("[I]f any provision of this Act conflicts with a statute enacted by the 74th Legislature, Regular Session, 1995, the statute controls."). In its revision of the Public Funds Investment Act, the Seventh-fourth Legislature made clear its intent to repeal the provision you inquire about. Accordingly, we need not address your question about it.

S U M M A R Y

Funds deposited in the court pending the result of a legal proceeding are trust funds that must be placed in the depository and handled in compliance with chapter 117 of the Local Government Code. Since the trust funds neither belong to the county nor are controlled by the commissioners court, they are not subject to investment pursuant to chapter 2256 of the Government Code.

In 1995, the Seventh-fourth Legislature repealed a 1993 amendment to the Public Funds Investment Act that authorized the county tax assessor-collector to use electronic means to transfer or invest ad valorem taxes collected on behalf of the county.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee

²The legislature adopted House Bill 2459 because of financial hardships experienced by political entities as a result of poor investments, often made by a single individual with complete authority over investments and little or no supervision. House Pensions and Investments Committee, Bill Analysis, H.B. 2459, 74th Leg., R.S. (1995).