



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 24, 1998

The Honorable L.H. Crockett  
Cherokee County Auditor  
502 North Main Street  
Rusk, Texas 75785

Letter Opinion No. 98-053

Re: Disposition of fee authorized by Health and  
Safety Code section 574.032(k) (RQ-1023)

Dear Mr. Crockett:

You ask whether a fee assessed under section 574.031(k) of the Health and Safety Code ("the code") should be deposited in the county general fund or be paid as a supplement to the salary of the county attorney. Section 574.031(k) pertains to proceedings for court-ordered mental health services and reads as follows:

Notwithstanding other law, a judge who holds a hearing under this section may assess for the services of a prosecuting attorney a fee in an amount not to exceed \$50 as a court cost against the county responsible for the payment of the costs of the hearing under Section 571.018.

Health & Safety Code § 574.031(k). Section 571.018 of the code lists costs to include "costs and salary supplements authorized under Section 574.031(i) and (j)" and "prosecutor's fees authorized under Section 574.031(k)." <sup>1</sup>*Id.* § 571.018(c)(5), (6) (emphasis added). Subsection (i) provides that "[a] judge who holds hearings at locations other than the county courthouse also may receive a reasonable salary supplement in an amount set by the commissioners court." <sup>2</sup>*Id.* § 574.031(i). Had

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<sup>1</sup>Section 571.016 of the code specifies that the county attorney shall represent the state in a hearing held under subtitle C of the Texas Mental Health Code. If the county does not have a county attorney, then the district attorney, the criminal district attorney, or a court-appointed special prosecutor shall represent the state.

<sup>2</sup>The bill analysis for House Bill 591, which added subsections (j) and (k) to section 574.031 of the code, explains the purpose of the bill:

The purpose of this bill is to provide that the expenses reimbursed to a judge who holds a hearing under this section in locations other than the county courthouse is set by the commissioners court of the county responsible for the costs of the hearing and paid directly to the judge. It also provides that the commissioners court of the county responsible for the costs of the hearing shall set the amount of any salary supplement to a judge who holds a hearing under this section in locations other than the county courthouse.

the legislature intended the prosecuting attorney to receive a salary supplement, we believe they would have provided for it in the statute as they did for the judge.<sup>3</sup>

Article XVI, section 61 of the Texas Constitution provides that county officers must be compensated on a salary basis.<sup>4</sup> An officer paid on a salary basis receives the salary instead of any fees, commissions, or other compensation that the officer would be otherwise authorized to keep. Local Gov't Code § 154.002. Money received in the form of fees or other compensation must be deposited with the county treasurer according to section 113.021 of the Local Government Code.<sup>5</sup> See Letter Opinion No. 97-107 (1997) at 2; Local Gov't Code § 113.021(a). The county treasurer is to deposit the money in the county depository in a special fund to the credit of the officer who collected the money. Local Gov't Code § 113.021(b). The appropriate special fund for fees, commissions, or other compensation collected by an officer who is paid on a salary basis is the applicable salary fund. *Id.*

A county is authorized to create an "officers' salary fund" from which the salaries of district, county, and precinct officers, salaries of their deputies, assistants, and clerks, and the authorized expenses of those offices are to be paid. *Id.* § 154.023(a). The salary fund is to be deposited in the county depository, kept separate from other county funds, and protected to the same extent as other county funds. *Id.* § 154.023(b). The commissioners court may, however, "[a]t its first regular meeting in the first month of each fiscal year . . . direct, by order entered in its minutes, that all money that otherwise would be deposited in a salary fund . . . be deposited in the general fund of the county." *Id.* § 154.007(a). In a county where this order is adopted, reference to a salary fund means the general fund. *Id.* § 154.007(b).

A fee collected as court cost for the services of a prosecuting attorney under section 574.031(k) of the Health and Safety Code is to be deposited with the county treasurer rather than paid as a salary supplement to the prosecuting attorney. County officers in a county with a population over 20,000 are to be compensated on a salary basis rather than receive any fees, commissions, or other compensation. Money received in the form of fees or other compensation

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<sup>2</sup>(...continued)

R.S., ch. 1354, § 1, 1997 Tex. Gen. Laws 5104, 5104.

<sup>3</sup>See Letter Opinion No. 96-075 (1996) (comparing statute's explicit grant of discretionary authority to county attorney in administration of "hot check" fund with fees collected under Family Code section 71.041(d) for compensation of prosecuting attorney that are to be paid into the county general fund).

<sup>4</sup>Article XVI, section 61 applies to all county officers in counties having a population of 20,000 or more. As of the last census, Cherokee County has a population of 41,049. See Bureau of the Census, U.S. Dep't of Commerce, 1990 Census of Population: Texas 1 (1990).

<sup>5</sup>The Local Government Code provides that a "district, county, or precinct officer who is paid an annual salary shall charge and collect in the manner authorized by law all fees, commissions, and other compensation permitted for official services performed by the officer. The officer shall dispose of the collected money as provided by Subchapter B, Chapter 113." Local Gov't Code § 154.003.

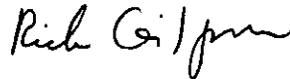
must be deposited with the county treasurer according to section 113.021 of the Local Government Code. The commissioners court may direct at its first meeting of the fiscal year to deposit money designated for a salary fund into the general fund.

**S U M M A R Y**

A fee collected as a court cost for the services of a prosecuting attorney under section 574.031(k) of the Health and Safety Code is to be deposited with the county treasurer rather than paid as a salary supplement to the prosecuting attorney.

A county officer paid on a salary basis receives the salary instead of any fees, commissions, or other compensation. Fees, commissions, or other compensation must be deposited with the county treasurer according to section 113.021 of the Local Government Code. The county treasurer is to deposit the money in the county depository in a special fund to the credit of the officer who received the money, in this case, to the credit of the prosecuting attorney. If the county has elected to deposit all money designated for a salary fund into the general fund, the money would go into the general fund.

Yours very truly,



Rick Gilpin  
Deputy Chair  
Opinion Committee