



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 12, 1998

The Honorable Richard B. Townsend
County and District Attorney
Morris County Courthouse
500 Broadnax Street
Daingerfield, Texas 75638

Letter Opinion No. 98-106

Re: Whether the 1997 amendments to Local Government Code section 117.054, effective September 1, 1997, require the Morris County District Clerk to collect an amount equal to ten percent of interest earned on registry funds placed in interest-bearing accounts prior to September 1, 1997 (RQ-1178)

Dear Mr. Townsend:

Under Local Government Code section 117.054, as amended in 1997, the appropriate clerk of court must, at the time money deposited into the court registry is withdrawn, allocate ten percent of the interest paid on the money to the county's general fund. The 1997 amendments became effective September 1, 1997, and apply to all registry funds, special accounts, or separate accounts the clerk held as of the effective date. We understand you to ask whether the Morris County District Clerk should allocate to the county an amount equal to ten percent of interest paid on an account established prior to September 1, 1997, and that has not yet been withdrawn. We conclude that, when the funds are withdrawn, the clerk must allocate an amount equal to ten percent of the interest paid on funds that were in an interest-bearing special or separate account on or after September 1, 1997, even though the interest may have accrued prior to September 1, 1997. You also suggest that Local Government Code section 117.122 may apply, but we conclude it does not.

You indicate that in cause number 15,161 in Morris County District Court, the court in April 1994 ordered the Morris County District Clerk to hold in trust approximately \$400,000.00. In accordance with the court's order, the clerk has held the money in trust, but has not collected an amount equal to ten percent of the interest that has accrued on the \$400,000.00. You ask whether the clerk must collect that amount going all the way back to the creation of the trust. We assume the \$400,000.00 was placed in an interest-bearing account. We further assume the money has not been withdrawn.

Your question involves what you call trust funds, which the statutes refer to as registry funds.¹ Registry funds are those funds tendered to the county, district, or county and district clerk

¹See House Comm. on Judicial Affairs, H.B. 2270, 75th Leg., R.S. (1997) (companion bill to S.B. 1304, 75th Leg., R.S. (1997)).

for deposit into the court's registry.² All registry funds are placed in an interest-bearing or noninterest-bearing special account in the depository selected under Local Government Code section 117.023.³ Some registry funds may be transferred from the special account to an interest-bearing separate account.⁴ Normally, funds may be withdrawn only by the person entitled to the funds and only under an order of the proper court.⁵

Your question is based on 1997 amendments to Local Government Code section 117.054. That section permits a county to recoup expenses associated with administering registry funds from any interest earned on the funds. Prior to the 1997 amendments, section 117.054(a) entitled a county to reimburse itself with "a part of the interest [if any] earned on trust funds placed in time deposits under Section 117.051." The pre-1997 version of section 117.054 did not specify a particular amount to which the county was entitled, but dictated that the portion of the interest the county retained reasonably must relate "to the accounting and administrative expenses" the county incurred in handling the funds. In 1997 the legislature amended section 117.054 to clarify the amount and method whereby the county is to compensate itself for accounting and administrative expenses associated with funds in the court registry:⁶

(a) If a special or separate account earns interest, the clerk, at the time of withdrawal, shall pay in a manner directed by a court with proper jurisdiction the original amount deposited into the registry of the court and any interest credited to the account in the manner calculated in Subsection (b).

(b) The interest earned on a special account or a separate account shall be paid in the following amounts:

(1) 10 percent of the interest shall be paid to the general fund of the county to compensate the county for the accounting and administrative expenses of maintaining the account; and

²See Local Gov't Code § 117.001(3) (defining "registry funds").

³See *id.* § 117.001(5) (defining "special account"); see also *id.* § 117.052(b) (requiring that registry funds deposited in depository be carried as "special account in the name of the clerk making the deposit").

⁴See *id.* § 117.001(4) (defining "separate account"); see also *id.* § 117.053(c) (stating when clerk must transfer registry funds into separate account).

⁵See *id.* § 117.053(b). But see *id.* § 117.053(a) (permitting clerk to transfer funds from old depository to newly selected depository).

⁶See House Comm. on Judicial Affairs, Bill Analysis, H.B. 2270, 75th Leg., R.S. (1997) (companion bill to S.B. 1304, 75th Leg., R.S. (1997)).

(2) 90 percent of the interest shall be credited to the special or separate account.⁷

In our opinion, the clerk must collect the amount specified in Local Government Code section 117.054(b)(1) on all registry funds that were placed in an interest-bearing account, regardless of when the interest accrued, and that were or are withdrawn on or after September 1, 1997.⁸ Under the statutory scheme, the clerk is to collect an amount equal to ten percent of the interest earned on registry funds at the time the funds are withdrawn. With respect to section 117.054 in particular, the 1997 enactment states that the amendments “apply to all registry funds, special accounts, or separate accounts . . . held by a . . . clerk on” September 1, 1997.⁹ Consequently, any withdrawals from interest-bearing accounts that occur on or after September 1, 1997, are subject to the amount stipulated in section 117.054(b). When the funds about which you ask are withdrawn, for example, the clerk must allocate to the county general fund an amount equal to ten percent of the interest earned on the money since the money was placed in an interest-bearing account, even though the interest may have accrued prior to September 1, 1997.

We disagree with your suggestion that Local Government Code section 117.122 somehow complicates the issue you raise. Section 117.122, which was adopted in 1989,¹⁰ directs the distribution of interest derived from registry funds, similar to section 117.054. But section 117.122 is part of Local Government Code chapter 117, subchapter E, which applies only to counties with a population of 2.4 million people or more.¹¹ Section 117.122 does not apply to Morris County.¹² Instead, Morris County is subject to the general directive, section 117.054.

⁷See Act of May 16, 1997, 75th Leg., R.S., ch. 505, § 14, 1997 Tex. Gen. Laws 1838, 1841.

⁸With respect to registry funds placed in noninterest-bearing accounts, see Local Gov't Code § 117.055, which requires a clerk, upon withdrawal of the registry funds, to deduct a fee equal to five percent of the withdrawal but not to exceed \$50. You do not ask, and we do not therefore consider, whether ten percent of the interest is “a sum . . . reasonably related to the value of the county’s services in safeguarding and investing the principal.” See *Sellers v. Harris County*, 483 S.W.2d 242, 244 (Tex. 1972).

⁹Act of May 16, 1997, 75th Leg., R.S., ch. 505, § 26, 1997 Tex. Gen. Laws 1838, 1843.

¹⁰See Act of Feb. 21, 1989, 71st Leg., R.S., ch. 1, sec. 17(b), § 117.123, 1989 Tex. Gen. Laws 1, 17, *renumbered and amended by* Act of May 26, 1991, 72d Leg., R.S., ch. 752, sec. 3, § 117.122, 1991 Tex. Gen. Laws 2644, 2645.

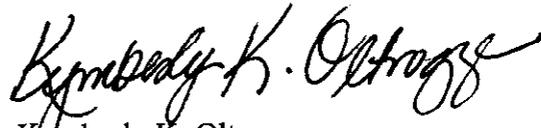
¹¹See Local Gov't Code § 117.111.

¹²See Bureau of the Census, U.S. Dep't of Commerce, 1990 Census of Population: General Characteristics: Texas 3 (1992) (population: 13,200).

S U M M A R Y

Local Government Code section 117.054 directs a county, district, or county and district clerk, when the funds are withdrawn, to allocate to the county general fund an amount equal to ten percent of interest earned on registry funds placed in an interest-bearing special or separate account, even interest earned prior to September 1, 1997. Section 117.054 applies to all registry funds placed in interest-bearing accounts and withdrawn on or after September 1, 1997.

Yours very truly,

A handwritten signature in black ink, reading "Kimberly K. Oltrogge". The signature is written in a cursive style with a large, stylized initial "K".

Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee