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January 5, 1993

The Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711-2548

RQ-475

Dear Dan:

Enclosed is a memorandum and several questions regarding the treatment of driver safety courses and several statutes that govern traffic regulations.

Please consider this letter a request for an opinion letter in response to the questions noted in the memorandum. Should you have any questions in reference to this request, please do not hesitate to contact Joe Morris of my staff at 463-0390. Your attention to this matter will be most appreciated.

Thank you very much for your assistance.

Sincerely yours,

A handwritten signature in cursive script that reads "Bill Sims".

Bill Sims

BS/jm
Enclosure

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MBJ RQ-475 92
file # ME-18454-E
FD# 18454
ack 1-11-93

MEMORANDUM

- 1) Is a plea entered or taken in a case handled under Section 143A, subsection (a)(1)?
- 2) Is a judgment entered at the time the proceedings are deferred under Section 143A, subsection (a)(1)?
- 3) Is the deferral considered a final conviction for the purpose of assessing court costs under subsection (a)(1), and if so, then under what statutory authority?

In Texas, a substantial number of traffic ticket cases are dismissed in municipal and Justice of the Peace courts through the completion of a driving safety course. The statutory authority allowing this disposition is found in Vernon's Texas Civil Statutes Ann. Article 6701d, Section 143A, subsections (a)(1), (a)(2) and Texas Code of Criminal Procedure Article 45.54. There is a great dispute concerning subsection (a)(1) as to the necessity of an actual plea, rendition of judgment, and payment of court costs. Prior Opinion No. JM-1124 (1989) addresses the issue in part but assumes no plea is taken under subsection (a)(1), and develops its conclusions accordingly.

A careful reading of the statute indicates that subsection (a)(2) requires several elements, one of which is entering a plea prior to the taking of the driver safety course. Subsection (a)(1) does not have strict elements and appears to offer much more latitude. Reading subsection (a)(1) in conjunction with Tex. Code Crim. Pro. Arts. 102.015(d) and 102.051(f), and 102.081(d) leaves some question as to whether or not the deferral is a conviction for the purpose of assessing court costs. All three sections state, "In this article, a person is considered to have been convicted in a case if:... (3) the court defers final disposition of the case." Paying proper regard to these sections would mandate the assessment of court costs.

Subsection (b) of Section 143A modifies both (a)(1) and (a)(2) stating:

"When the person complies with the provisions of subsection (a) of this section...the court shall remove the judgment and dismiss the charge..."[emphasis added]

Subsection (b) assumes the judgment is rendered in both discretionary (a)(1) dismissal, and the mandatory (a)(2) dismissal. The actual wording of (a)(1) does not, however, necessitate the acceptance of a plea. If there is no plea, or no judgment, then the defendant has not received a conviction capable of supporting the imposition of court costs.

Herein lies the rub. Subsection (c), which further modifies both (a)(1) and (a)(2), provides for a special expense fee of up to \$10.00 to be paid to the court by the person requesting a driving safety course. As discussed in JM-1124 (1989), it would be unconstitutional to require the fee to be paid by a person who had not been adjudicated to be guilty. Hence, the assumption of subsection (c) is that a plea is required from both the mandatory and discretionary sections to allow the option of assessing the special fee. The corresponding argument is that under subsection (a)(1), the court is not entitled to collect any fee whatsoever, and must dismiss the cause upon presentation of proof of completion of the defensive driving course.

The author of Opinion JM-1124 (1989) assumed for the purpose of that opinion that subsection (a)(1) does not require a plea, and that subsection (a)(2) does, therefore the legislature intended that there not be a plea in subsection (a)(1). Unfortunately, we can not reconcile that finding with Articles 102.015(d), 102.051(f), and 102.081(d) of the Tex. Code Crim. Pro., and subsection (c) of Article 6701d, Section 143A, V.T.C.A., and the resulting unconstitutional requirement of payment of fees by persons who have not entered a plea of guilty or no contest.