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Opinion Committee

CERTIFIED RECEIPT NO.: P 564 144 769

September 2, 1997

The Attorney General of Texas
Supreme Court Building
Attn: Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

RO-992

FILE # ML39758-97
I.D. # 39758

Re: Request for attorney general's opinion pursuant to V.T.C.A., Government Code, Section 402.043

Dear Sir/Ma'am:

Pursuant to referenced statute, I am requesting an attorney general's opinion. I will first set out the questions, then the facts, the law that I think is applicable and my conclusion.

FIRST QUESTION:

Are the defensive driving fees collected by a county's justices of the peace as per V.T.C.A., Transportation Code, Section 543.106 are to be deposited in the justice's separate accounts at the county's depository bank to cover the costs of administrating this subchapter? Or, as the aforementioned statute states in subsection (c), should these be deposited in the county treasury first:

"Fees collected by another court shall be deposited in the county treasury of the county in which the court is located."

SECOND QUESTION:

If the answer to the first question is that the fees are to be deposited in the county treasury or general fund, then does the commissioners court have discretion as to how these funds are to be spent or is it totally within the discretion of the justices of the peace as to how these funds are to cover the costs of administering this subchapter?

THIRD QUESTION:

Would particular line items need to be set up by the commissioners court in the county's budget for its justices of the peace to administer these fees?

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FOURTH QUESTION:

For what purposes would the fees so collected by the justices of the peace be used to cover the cost of administering the subchapter? Could these fees be used only to supplement the salary of the clerk of the justice of the peace and to purchase office equipment or supplies in the same manner that district and county attorneys are allowed to administer their hot check fees?

FIFTH QUESTION:

If the justices of the peace have total discretion to use these fees in the costs of administering this subchapter, can the commissioners court subtract the approximate dollar amount of these fees from the justices of the peace budgets, and, in effect, use the fees to supplement the justice of the peace budget?

THE FACTS:

Frio County, Texas, at the last Federal Census had a population of under 20,000 and the commissioners court, past and present, have elected to compensate county officials on a salary basis.

For many years justices of the peace collected defensive driving course fees. The fees so collected were used to supplement the justices of the peace clerk's salaries, and to buy office equipment and supplies.

In the last several years various county departments, due to severe financial straits that the county finds itself in, have attempted to collect various "fees" for their own departments' uses rather than remit these fees to the county's general fund.

In a letter to my county auditor with the attached Subchapter B, "Dismissal of Certain Misdemeanor Charges on Completion of Driving Safety Course," I stated, basically, that fees collected by county officials are deposited in the county treasury (see enclosed copy of Texas Constitution, Art. XVI, Sec. 61) unless otherwise specified by statute; and, once these various fees are collected and deposited, then the commissioners court has total discretion within the budget as to how the fees are spent.

I am enclosing copies of the following correspondence:

- a. Letter, dated August 12, 1997, with attached section 543.106, from the County Auditor to the four Justices of the peace, in effect, stating that all defensive driving course fees are to be deposited in the county's General Fund.
- b. FAX transmittal from Assistant Attorney General John Fuller, dated August 18, 1997, to the Hon. Jack E. Proctor, Jr., Precinct No. 4, Justice of Peace, with attached copy of DM-396;
- c. FAX transmittal from Texas Justice Court Training Center to the Hon. Jack E. Proctor, Jr., with attached applicable statutes; and
- d. FAX transmittal, dated August 20, 1997, from the Hon. Jack E. Proctor, Jr., to Frio County Auditor.

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The correspondence between Judge Proctor and Assistant Attorney General Fuller and the Texas Justice Court Training Center indicate (unofficially) that these defensive driving fees so collected are to be expended to cover the costs of administering this subchapter and in the Justices' discretion as to how the fees are to be spent..

THE APPLICABLE LAW:

- a. Texas Constitution, Art. XVI, Sec. 61;
- b. V.T.C.A., Government Code, Section 543.106 as well as the remaining statutes in Subchapter B;
- c. Op. Atty. Gen. No. JM-313; and
- d. Op. Atty. Gen. No. DM-396

MY CONCLUSION:

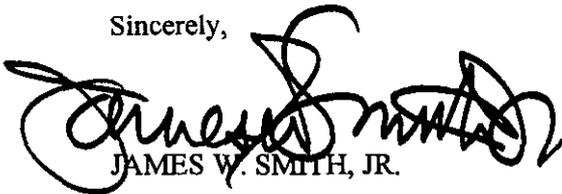
Apparently and from a close reading of Section 543.106, of the Government Code defensive driving fees collected in the discretion of a justice of the peace would have to be remitted to a county's general fund but for discretionary use by a justice of the peace to cover the cost of administering Subchapter B, Chapter 543, Transportation Code.

If this is the case, then the County Judge (assisted by the County Auditor) would prepare line items (for defensive driving course fees) in the budget (see V.T.C.A., Local Government Code, Section 111.004).

Furthermore, pursuant to Op. Atty. Gen. No. JM-313 a commissioners court is not authorized to reduce salaries of a county attorney's secretary, and, therefore, force that county official to make up the difference with his/her hot check collection fees. The same analogy might be made with a commissioners court cutting salary of a clerk of the justice court, thus necessitating the justice to attempt to make up the difference from the defensive driving course fees.

The defensive driving course fees could be used to supplement the salary of a clerk of the justice court, or to buy equipment and supplies for court's office. I would draw the same analogy to the hot check collection fees expenditures (see C.C.P., article 102.007).

Sincerely,



JAMES W. SMITH, JR.

JWSJr/ymm
xc: Files

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- xc: Hon. Carlos A. Garcia (w/encls)
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- xc: Hon. Jesus G. Salinas (w/encls)
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- xc: Hon. J. M. Lindsey, III. (w/encls)
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- xc: Hon. Adolfo Alvarez (w/encls)
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- xc: Hon. Humberto Berrones (w/encls)
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- xc: Ms. Mary Hornbostle (w/encls)
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