



# MORRIS COUNTY

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COUNTY AND DISTRICT ATTORNEY  
76TH & 276TH JUDICIAL DISTRICTS

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JAN 05 1997

Opinion Committee

January 2, 1998

Certified Mail # Z703712453

To the Honorable Dan Morales  
Office of the Attorney General  
PO BOX 12548  
Austin, Texas 78711-2548

RE: Request for opinion

Dear Attorney General Morales:

I request your opinion for Morris County concerning: 1) The proper interpretation and application of the Local Government Code 117.112 as it relates to local Government 117.054 as amended by senate bill 1,304 in the 1997, 75th Legislature. Local Government Code 117.122 states that ten percent interest should be taken from any registry funds effective August 26, 1991. Senate Bill 1,304 redefines Trust Funds as Registry Funds effective September 1, 1997, in Local Government Code 117.054. The question at hand is whether we should begin deducting the interest fee of ten percent as of September 1, 1997, or should we go back to August 26, 1991, on all Trust Accounts.

## FACTS

In Cause Number 15,161 in Morris County District Court in April 1994, the Court ordered the District Clerk of Morris County to hold in trust approximately \$400,000.00 dollars. Since that date the Morris County District Clerk has held this money in trust during that time the District Clerk has not collected a ten percent administrative fee. The Local Government Code 117.112 states that ten percent of the interest should be taken from any registry funds effective August 26, 1991.

### Local Government Code Section 117.122. Interest

(a) The interest derived from money on deposits in the registry fund shall be paid as earned as follows:

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I.D. # 40003

(1) a sum equal to 10 percent of the interest shall be paid into the general fund of the county to reimburse the county for the expenses of maintaining the registry fund; and

(2) the remaining 90 percent of the interest shall be credited to the registry fund.

(b) for each withdrawal, the District Clerk shall pay out an original amount deposited in the registry of the court and 90 percent of the interest earned on that amount at that time and in the manner directed by the court with proper jurisdiction.

Local Government Code 177.054 was amended by the acts of the 1997, 75th legislature in Senate Bill 1,304 the redefines trust funds as registry funds effective September 1, 1997.

#### Local Government Code Section 117.054

(a) if a special separate accounts 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 or the calculated in Subsection (b).

(b) The interest earned on a special account or 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 accounting and administrative expenses of maintaining the account; and

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

#### DISCUSSION AND BRIEF

The County's response to the situation is as follows: Local Government Code 117.122 states that ten percent of the interest shall be taken from any registry funds effective August 26, 1991, however; the trust funds involved here were not defined as registry funds until Local Government 117.054 was amended effective September 1, 1997. (Although this trust was in place since April, 1994, it is the county's position that the trust was not registry funds until September 1, 1997.) Since they were not registry funds till that date the ten percent administration fee should begin at that time only. To retroactively go back to the origin of the trust fund of April, 1994, could cause a paperwork nightmare for many trust funds in many counties. Local Government Code 117.054 as amended did not specifically call for retroactivity of that statute.

Since this statute has just recently come into effect there is no caselaw available, nor has there been any attorney general opinion that would reflect a ruling on this subject. Therefore the Morris County position is that the statute not be implemented retroactively. To do so would cause an enormous amount of paperwork in all district clerk's offices across the state. It would also take from those who benefit from these trusts in a manner not anticipated when the trust was established in district court by the parties to that lawsuit or the court itself.

Sincerely,

A handwritten signature in cursive script that reads "Richard B. Townsend".

Richard B. Townsend  
Morris County District Attorney

RBT/pp