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OPINION COMMITTEE

RQ-0424-8

August 29, 2001

Attorney General John Cornyn  
The State of Texas  
P.O. Box 12548  
Austin, Texas 78711

C.M./R.R.R.# 7000 0520 0023 6126 7076

ML-42128-01  
FILE # ~~ML 4212~~

I.D.# 42128

Re: Civil Division Opinion 01-OP-108; House Bill 177

Dear General Cornyn:

We are asking for your opinion regarding the constitutionality of House Bill 177 passed by the 77<sup>th</sup> Legislature of the State of Texas. 2001 Tex. Sess. Law Serv. Ch. 977 (Vernon's 2001) codified in TX. CODE CRIM.PROC. Art. 102.0173 (hereafter referred to as House Bill 177). House Bill 177 provides:

(a) The commissioners court of a county by order may create a justice court technology fund and may require a defendant convicted of a misdemeanor offense in a justice court to pay a technology fee not to exceed \$4 as a cost of court.

(b) In this article, a person is considered convicted if:

- (1) a sentence is imposed on the person; or
- (2) the court defers final disposition of the person's case.

House Bill 177.

House Bill 177 seems eerily similar to section 51.702 of the Texas Government Code. In 1992 Attorney General Dan Morales opined that section 51.702 was "ineffective on both due process and equal protection grounds." Op. Tex. Att'y Gen. No. DM-123 (1992). The basis for that opinion is grounded in the due process and equal protection principles that a law that fixes a greater punishment in one county than in other counties for violation of a state law cannot be upheld. *Ex parte Carson*, 159 S.W.2d 126, 129 (Tex.Crim.App.1939).

House Bill 177 appears to contain the same infirmity. It provides a technology fee that may not be approved in every county, therefore varying by county and the amount of the fee is in a not to exceed amount of \$4. Whether some counties choose not to adopt the fee or some counties choose to adopt less than the full amount of \$4, the practical effect of House Bill 177 is to allow the counties the choice to impose the

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technology fee, thereby allowing the penalty for state-defined crimes to vary from county to county. See Op. Tex. Att'y Gen. Nos. Jm-880 (1988), JM-1120 (1989).

We therefore respectfully request your opinion regarding the constitutionality of House Bill 177.

Sincerely,



TIM CURRY  
CRIMINAL DISTRICT ATTORNEY  
TARRANT COUNTY, TEXAS

TC/sdb