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**TARRANT COUNTY** Opinion Committee

OFFICE OF THE  
CRIMINAL DISTRICT ATTORNEY

TIM CURRY  
CRIMINAL DISTRICT ATTORNEY  
817/884-1400

JUSTICE CENTER  
401 W. BELKNAP  
FORT WORTH, TX 76196-0201

September 27, 1999

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OPEN RECORDS DIVISION

Honorable John Cornyn  
Texas Attorney General  
Post Office Box 12548  
Austin, Texas 78711-2548

RQ-0117-JC

VIA C.M./R.R.R. # Z 308 647 911

FILE # ML-410.30-99 Re:  
I.D. # 41030

Opinion request concerning the management and disposition of cash bail bond balances for non-filed cases where the defendant cannot be located and related issues.

Dear General Cornyn:

We are writing this opinion request on the following issues: First, may the Tarrant County Sheriff maintain cash bond monies for non-filed cases in a separate interest bearing account. Second, may the Sheriff's Department disburse cash bond monies to known defendants whose criminal cases were not filed by the District Attorney's Office. Third, if the defendant cannot be found, are the cash bond proceeds for criminal cases not filed by the District Attorney's Office considered abandoned property. And, similarly, are the liquidated certificates of deposits once used as bail bond collateral considered abandoned property when the bondsman/attorney cannot be found.

In Attorney General Opinion No. C-740, your office opined that a peace officer must accept a cash bond tendered by a defendant provided that certain circumstances are met. If the officer receiving said monies is not the custodian of the funds of the court, then he should deposit the sum of money received with the custodian. And, since the clerk of the court or justice of the peace is already charged with the duty, the court does not need or have the authority to appoint the sheriff as custodian of these funds. This opinion seems to imply that the sheriff may only receipt the monies when presented and then must immediately turn over the funds to the appropriate custodian. However, a problem arises when these monies are receipted by the Sheriff's department and a case has not yet been filed by our District Attorney's Office. At that time, the monies cannot be deposited in the registry of the court, and a result, remain in the Tarrant County Sheriff's Trust Fund Account.

According to § 117.052 of the Local Government Code, a county clerk or a district clerk who has legal custody of money deposited for more than three days pending the outcome of a legal proceeding *must* deposit the money in the county depository. Therefore, should these monies be forwarded directly to the county or district clerk to be deposited in county depository even though a case has not been filed and a court assignment has not been made? In the interim of a case being filed, the Tarrant County Sheriff manages this account, which is a separate interest bearing account. Because the county auditor, acting as county treasurer, does not have signatory authority over the account although the account is listed as collateralized in the Tarrant County depository bank agreement, would this account be considered a county depository?

Second, does the sheriff's department have the authority to return cash bond monies received and placed into the Sheriff's Department Trust Fund Account to defendants whose criminal cases have been "no-filed" by the District Attorney's Office? Presently, the Sheriff's Department attempts to locate defendants whose cash bond monies has been receipted for but never forwarded to the registry of the court and/or the county depository because their case was never filed. In cases where the defendant has been located and the District Attorney's office has issued a "no-file letter", our Sheriff's Department has been releasing the money to the proper party. In Attorney General Opinion JC-0024, Article 17.02 of the Texas Code of Criminal Procedure was strictly construed. In applying Article 17.02, your office opined that cash bond money deposited by someone other than the defendant must be receipted in the name of the defendant and refunded to the defendant upon satisfaction of the terms and conditions of the bond and upon court order. *Id.* at 79. However, this opinion is predicated on the fact that the cash bonds receipted and refunded are filed cases in which the court has jurisdiction to enter an appropriate order as it relates to the proceeds of the cash bonds on deposit. When a case is "no-filed" by the District Attorney's Office, no court has the jurisdiction to enter such an order, thereby, causing said monies to accumulate instead of being returned to the defendant.

Similarly, if the defendant cannot be found, are the cash bond proceeds for criminal cases not filed by the District Attorney's Office considered abandoned property. In Melton et al. v. State, Tx. S. Ct., No. 98-0784, at 1 (April 29, 1999), the Supreme Court affirmed an appellate court holding that unclaimed cash bail bonds may become abandoned property within three years of a final judgment in the underlying criminal case and that the county clerk is the "holder" of said unclaimed funds and is obligated to report and deliver (upon order of the court) these unclaimed funds to the comptroller. Pursuant to § 117.052 of the Texas Local Government Code, the county clerk or district clerk is responsible for the cash bail bonds deposited into the registry of the court. Moreover, the district and county clerk are governed by the provisions contained in Chapter 74 of the Texas Property Code which deals with the appropriate disposition of property presumed to be abandoned.<sup>1</sup>

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<sup>1</sup> Pursuant to § 74.101(a) of the Texas Property Code, the holder of property presumed to be abandoned under Chapter 72, 73 or 75 *shall file a report* of the property on or before the following November 1. However, according to Melton, the clerk does not have a duty to *deliver* abandoned cash bail bonds until the court orders its release. *Id.* at 5.

This office does not disagree with the court's ruling in Melton, however, the ruling does not account for the disposition of cash bail bonds not deposited into the registry of the court because a criminal case was never filed or never resulted in a final judgment. Therefore, does this mean that these unclaimed cash bail bonds may not be considered abandoned property pursuant to Chapter 74 of the Texas Property Code? If so, what is the appropriate management and disposition of these funds? If, however, this property may become abandoned property subject to Chapter 74 of the Texas Property Code, when does the three year dormancy period commence and whose responsibility and/or duty is it to report and deliver these funds to the comptroller? In Melton, the court held that the three year dormancy period commenced the date of entry of final judgment or order of dismissal in the action in which the funds were deposited. Id. at 3. In this scenario, the action in which the funds were deposited never resulted in a final judgment and as such, remained in the Sheriff's Trust Fund Account.

In addition to the unclaimed cash bail bonds on deposit in the Sheriff's Trust Fund Account, there is about \$ 90,766.04 in unclaimed liquidated certificates of deposit. These certificates of deposit were once used as collateral for bail bondsmen and/or attorneys who wrote bonds in Tarrant County and who now cannot be located. According to § 72.101(a), personal property is presumed to be abandoned if, after three years, the owner's existence and location is unknown and a claim to the property has not been asserted. See Tex. Prop. Code § 72.101(a). However, like cash bail bonds, there is no trigger to commence the three year dormancy period before determining the property is abandoned. Should this property, if determined abandoned, be disposed in the same manner as the unclaimed cash bail bonds?

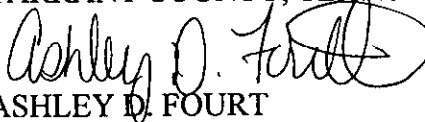
Finally, should the Sheriff's Trust Fund Account continue to earn interest on the property described herein, specifically, the interest earned on both the cash bail bonds for non-filed criminal cases and the liquidated certificates of deposit or should this account be converted to a non interest bearing account? According to DM-282, all interest that accrues on cash bail bonds during the time it is in the county's possession belongs to the bailee; the county may keep only a portion of the interest in compliance with § 117.054 of the Local Government Code. Id. at 2651. However, this opinion does not address the disposition of interest accrued on the liquidated certificates of deposit.

### **Conclusion**

For the reasons stated above, the Tarrant County District Attorney's Office respectfully requests that your office to issue an opinion regarding the issues presented herein.

Sincerely,

TIM CURRY  
CRIMINAL DISTRICT ATTORNEY  
TARRANT COUNTY, TEXAS

  
ASHLEY D. FOURT  
Assistant District Attorney