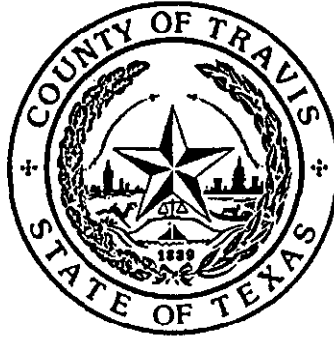


TRAVIS COUNTY
AUDITOR'S OFFICE

SUSAN A. SPATARO, CPA, CMA
COUNTY AUDITOR



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RQ-0157-JC

December 3, 1999

To The Honorable John Cornyn
Attorney General of the State of Texas
c/o Elizabeth Robinson
Chair, Opinion Committee
P.O. Box 12548
Austin, TX 78711

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DEC 07 1999

FILE # ML-41141-99
I.D. # 41141

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DEC 03 1999
OPEN RECORDS DIVISION

Re: Clarification of Opinion No. JC-0102; re: whether the county clerk has a duty to collect reimbursement for mental health services proceeding costs paid by a county that is not responsible for these costs

Dear Sir or Madam:

You recently answered our request for a legal opinion on the above referenced issue. Your thoughtful response has raised additional questions, and has lead me to believe that my earlier request for an opinion may have inadvertently created a misstatement of an essential fact. In providing the background upon which the legal question was raised, my request used terminology that was correct in accounting parlance, but did not accurately describe timing of the collection process.

My understanding of the reasoning underlying the opinion is that once "court costs" are paid, no matter who pays them, the Clerk no longer has a duty to be involved in any further efforts of collecting reimbursements for an entity which paid the "court costs" unless the clerk accepts a delegation of authority to make further collection efforts from the commissioners court. I do not disagree with this reasoning, but note that it seems to turn on the fact that the "court costs" have already been paid. My points of clarification are: (1) whether the corollary of your opinion would be that if the "court costs" have not been paid by any entity, then the County Clerk has a duty to collect such "court costs"; and (2) which costs under the Mental Health Code are or are not considered to be "court costs" subject to collection by the County Clerk.

In the summary of your opinion, you state that "The county clerk does not have a statutory duty to collect the reimbursements to which a county may be entitled for mental health services proceeding costs actually paid by the county, but the commissioners court may delegate that responsibility to an appropriate county official." The facts, as presented to you in my letter dated September 29, 1998, misstate one crucial point. In the first page of my letter I represented to you that

“[W]ith each non-Travis County application for involuntary mental health services that is heard by Travis County Probate Court No. 1, Travis County uses resources and forwards funds to pay for the required application fee under Government Code §118.052, and other costs such as attorney’s fees, physician examination fees, compensation of court-appointed personnel, transportation expenses, and prosecutor’s fees.”

By this description, we attempted to explain that the county pays the overhead costs of running the court. County coffers provide justice infrastructure to bring cases to conclusion. Only at the conclusion of a case can the judge determine the services rendered and order payment of the costs. While the original description accurately states an accountant’s view of the transaction, it creates the mistaken belief that some entity affiliated with Travis County was tendering these “court costs.”

Travis County does not pay (or make a corresponding accounting entry on its books) the “court costs,” but relies on an oral or written representation by a “responsible county” that “court costs” will be paid upon receipt of a Clerk’s cost bill. Travis County provides the court services necessary to the commitment process and the corresponding accounting entry shows a liability (or accounts receivable) for the costs. Enclosed is a copy of a written request to hear a case and a promise to pay “court costs.”

The significance of the misstatement is that “reimbursement” is not the real issue in this matter and probably not the appropriate terminology in regard to my original request. Travis County is seeking to recover “court costs” from those counties who have accepted their responsibility to bear the “court costs” set forth in the Mental Health Code and under other applicable law. These counties are utilizing Travis County resources in the mental health commitment process and have agreed to pay “court costs.” These counties are unwilling to pay these “court costs” without a Clerk’s cost bill. Reimbursement in this context may be a misnomer. Thus, does the County Clerk have a statutory duty to collect moneys to which a county may be entitled for mental health services proceeding costs if they have not been paid by the county?

The second part of your opinion that raised an additional question is the comment that ... “the reimbursements are not “court costs,” which the county clerk as clerk of the probate court may otherwise have a duty to collect from the responsible county.” Our local probate judge believes all of the costs enumerated under §571.018 of the Mental Health Code are court costs because they are designated as such in other parts of the Mental Health Code. See TEX. HEALTH & SAFETY CODE ANN. §571.018 (Vernon Supp. 1999). The services enumerated under §571.018 are the very ones for which Travis County is performing and not getting paid.

While §571.018 does not specifically use the phrase “court costs” when discussing which county is responsible for costs that are incurred, there are references in §571.018(b) to other sections of the Mental Health Code which suggest that the Legislature considered these costs as “court costs.” For example §571.018(c)(3) refers the reader to §571.017 which says that if the court orders the payment of reasonable compensation to attorneys, physicians, language interpreters, sign interpreters, and masters, that compensation should be taxed as costs in the case. See TEX. HEALTH & SAFETY CODE ANN. §§571.018(c)(3) & 571.017 (Vernon Supp. 1999). It has always been my understanding (and I believe it is a common one) that costs of a case that are taxed are one and the same as “court costs.” Likewise, §571.018(c)(5) refers the reader to §574.031(j) which specifically

states that a judge holding a hearing under §574.031 may assess a fee for the service not to exceed \$50.00 as a court cost against the county responsible for payment of costs of the hearing under §571.018. See TEX. HEALTH & SAFETY CODE ANN. §§571.018(c)(5) & 574.031(j) (Vernon Supp. 1999). Further, §571.018(c)(6) refers the reader to §574.031(k) which says the judge may assess a fee for the services of a prosecuting attorney for the service provided in a mental health commitment hearing, once again not to exceed \$50, as a court cost against the county responsible for payment of costs of the hearing under §571.018. See TEX. HEALTH & SAFETY CODE ANN. §§571.018(c)(6) & 574.031(k) (Vernon Supp. 1999).

Are some or all of those costs listed under Mental Health Code §571.018 "court costs?" And, if so, how does that affect the County Clerk's duty to collect "court costs?"

Accordingly, I respectfully request an answer to the following questions:

- (1) Does the clerk of a county with a state hospital have a statutory duty to collect court costs to which a county may be entitled for mental health services proceeding costs if they have **not** been paid by any county?
- (2) Are the costs listed under Mental Health Code §1.018 court costs and does the County Clerk have a duty to collect such costs?

I apologize that my mistake is causing your office to take extra time to revisit this issue, however, because the loss of funds to Travis County is so significant I respectfully request that you reconsider this matter.

Sincerely,



Susan A. Spataro, CPA, CMA
Travis County Auditor

C: Judge Guy Herman,
Travis County Probate Court

:attachment