

RECEIVED
JUN 20 2000
OPINION COMMITTEE



TARRANT COUNTY
OFFICE OF THE
CRIMINAL DISTRICT ATTORNEY

RECEIVED

JUN 19 2000 ✓

OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

✓LR

TIM CURRY
CRIMINAL DISTRICT ATTORNEY
817/884-1400

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

June 13, 2000

Attorney General John Cornyn
P.O. Box 12548
Austin, Texas 67611

FILE # ML-41478-00
I.D. # 41478

RQ-0249-JC

RE: Request for Attorney General Opinion concerning
application of TEXAS LOCAL GOVERNMENT CODE
118.011 (C) and TEXAS GOVERNMENT CODE 552.261

Dear General Cornyn:

We would like to request an opinion from your office pursuant to Chapter 402 of the TEXAS GOVERNMENT CODE.

The County Clerk is the official record keeper for the county's Commissioners Court pursuant to TEXAS LOCAL GOVERNMENT CODE § 81.003. These records of the Commissioners Court, are, generally speaking, open records pursuant to the Texas Public Information Act. See TEXAS GOVERNMENT CODE §§ 552.002 (a) and 552.003 (1) (A) (ii). The County Clerk frequently responds to requests for public information from those records which require significant employee time for location and assembly of documents.

Public Information statutes and regulations state that the Clerk may charge a requestor for employee time spent assembling open records (along with associated overhead costs) at the rate of \$18.75 per hour *only when the search involves records kept in more than one building which are not physically connected, OR kept in a remote storage facility OR which result in production of more than fifty pages of documents.* See TEXAS GOVERNMENT CODE §§ 552.261, TEXAS GOVERNMENT CODE § 552.262, and the Regulations of the Texas General Services Commission found in the Texas Administrative Code.

However, TEXAS LOCAL GOVERNMENT CODE § 118.011 (C), which pertains to fees of the County Clerk other than court fees, states that the clerk shall charge reasonable fees for performing other duties prescribed or authorized by statute for which a fee is not prescribed by subchapter B of Chapter 118 of the TEXAS LOCAL GOVERNMENT CODE. According to this provision, taken in isolation, the County Clerk could charge a reasonable fee for employee services required to assemble less than fifty pages of Commissioners Court's records even if the search involved records kept in only one building or in multiple buildings which were physically connected and where there was no search of any remote storage facility.

Our question is: which statute takes precedence in the case of searches within one building's

Attorney General John Cornyn

June 14, 2000

Page 2

records (where the building is not a remote storage facility) which result in production of less than fifty pages of public information: **Government Code § 552.261 (a)**, which prohibits labor charges for such searches, or **Local Government Code § 118.011 (c)** which allow County Clerks to charge reasonable fees for any of their non-judicially related services for which no specific fee is found in subchapter B of the TEXAS LOCAL GOVERNMENT CODE?

The Attorney General's Office previously addressed this kind of a question in *Op. Tex. Att'y Gen. LO-96-082 (1996)*. That opinion found that one of Chapter 118's specific fees prevailed over applicable provisions of Chapter 552 because the specific fee had been passed more recently by the legislature.

Applying the same reasoning in this case would dictate that Chapter 552 would control. However, there are other maxims of statutory construction besides date of enactment that are often used to determine which statute will control in the case of multiple statutes which cannot be harmonized in a particular situation. For example, a commonly applied principle of statutory construction is that a more specific statute controls over a more general one. See TEXAS LOCAL GOVERNMENT CODE § 311.026 (VERNON 1998). The question presented in *Op. Tex. Att'y Gen. LO-96-082 (1996)* could easily have been resolved on that basis.

If this principle is applied to the instant conflict, would the Chapter 118 provision control because it is more specifically concerned with County Clerk services, as opposed to Chapter 552's general provisions concerning any governmental body's open records, or would the Chapter 552 control because it is specifically concerned with open records, while the Chapter 118 provision is concerned generally with fees for County Clerk services?

We therefore respectfully request your opinion regarding application of these statutes to the situation described in this letter.

Sincerely,



TIM CURRY
CRIMINAL DISTRICT ATTORNEY
TARRANT COUNTY, TEXAS



DAVID K. HUDSON
ASSISTANT CRIMINAL DISTRICT
ATTORNEY
TARRANT COUNTY, TEXAS

TC/apc