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CIVIL SECTION

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FILE # ML-41502-00

I.D. # 41502

RQ-0254-9C

June 26, 2000

Honorable John Cornyn
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OPINION COMMITTEE

Re: Interpretation of Section 51.921, Government Code

Dear General Cornyn:

I am writing to ask for your opinion on the proper interpretation of §51.921, Government Code. Specifically, does the term "judicial officer" in §51.921(d) refer to the court clerk or to the judge or justice of the court?

DISCUSSION

§51.921 was added to the Government Code by SB 1417 during the 75th Legislative Session (1997). Subsection (d) was added by amendment on third reading in the House of Representatives. Thus, there is no legislative history to reveal legislative intent in the use of "judicial officer" in that subsection.

As the term "judicial officer" has not been legislatively defined as used in §51.921, it must be construed according to ordinary rules of grammar and common usage. §311.011, Government Code. From a practical reading of the section, it appears "judicial officer" refers to the court clerk. Subsection (a) authorizes the various court clerks to collect the time payment fee. Subsection (b) requires "the officer collecting the fees" to keep records of payments under the section and to deposit the money in the county or municipal treasury. Subsection (d) requires the county or municipality to prioritize the needs of "the judicial officer who collected the fees" when making expenditures under that subsection. Thus, it appears counties and municipalities must prioritize the needs of the court clerks, and not the various judges and justices, when making expenditures under Subsection (d).

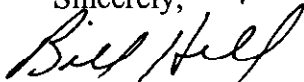
The interpretation of the phrase "judicial officer" to mean someone other than a judge or justice of a court is not unprecedented. Prosecutors, for instance, have been held to be "judicial officers." *Jones v. State*, 803 S.W.2d 712 (Tex.Cr.App. 1991). Further, the provisions creating both the district and county clerks are found in Article V, Judicial Department, of the Texas Constitution. See Art. V, §9 and §20. Finally, opinions from Texas Attorneys General recognize that district and county clerks are officers as opposed to employees. LO98-035 (district clerks); LO98-055 (county clerks).

On the other hand, construing "judicial officer" in §51.921(d) to refer to the clerk of a justice or municipal court may not be appropriate. Justice and municipal court clerks may not meet the test set forth in *Aldine Independent School District v. Standley*, 280 S.W.2d 578 (Tex. 1955), for determining whether one is an officer or an employee ("whether any sovereign function of the government is conferred upon the individual to be exercised by him for the benefit of the public largely independent of the control of others"). DM-212 (1993). If justice and municipal court clerks are excluded from the term "judicial officer" in §51.921(d), a consistent reading of the statute would seem to also exclude district and county clerks. There is no indication the Legislature meant to refer to clerks in some instances and judges in others.

Finally, some Texas statutes define "judicial officer" to mean judges or other persons with adjudicatory powers in the judiciary. See, Govt. Code T.2, Subt. F App., Jud. Admin., Rule 12; Loc. Govt. Code §159.032. And the term is used in Article V, §1-a, Texas Constitution, to obviously refer exclusively to judges and justices.

I appreciate your kind assistance in this matter. Should you have any questions or need additional information, please do not hesitate to contact John B. Dahill, Assistant District Attorney, at (214) 653-6171.

Sincerely,



Bill Hill
District Attorney

cc: Hon. Jim Hamlin
District Clerk

Hon. Jim Pruitt
Judge, County Criminal Court No. 2