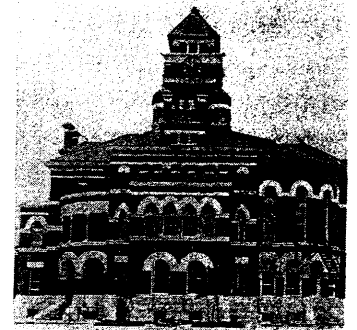


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GONZALES COUNTY  
COURTHOUSE - 1895

December 27, 2001

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OPINION COMMITTEE

RQ-0485-JC

Ms. Susan Gursky  
Opinion Committee Chair  
Office of the Attorney General  
P. O. Box 12548  
Austin, Texas 78711-2548

FILE # ML-42345-01  
I.D. # 42345

Dear Ms. Gursky:

I am requesting that the office of the Attorney General of Texas issue an opinion in response to the following question:

"Is an acceptable fine suggested by a Justice of the Peace in a class "C" misdemeanor criminal case, which acceptable fine is made in connection with the issuance of a warrant of arrest for the failure of the defendant to appear in a class "C" misdemeanor case, a debt or an account receivable ordered to be paid by a court that may be collected by a private vendor pursuant to the provisions of Article 103.0031 of the Texas Code of Criminal Procedure?"

The circumstances in this type of case are common in class "C" misdemeanor offenses most typically in traffic offenses in which a citation is issued and the defendant is not arrested. In the case of a traffic citation, the citation is issued on the highway and the defendant is allowed to sign the citation promising to appear and is then released at the time of the offense by the charging officer. That defendant is directed to contact the court. In the event the violator does not contact the court, the Justice of the Peace can issue a warrant for the arrest of the violator based upon the violator's failure to appear. Often in connection with this warrant, the court suggests a fine that would be acceptable to the Justice of the Peace upon the arrest of the violator. The acceptable fine can be paid to the magistrate when arrested.

Article 103.0031 of the Code of Criminal Procedure allows private attorneys or a private vendor to provide collection services for debts and accounts receivable such as fines, fees, restitution and other debts or costs ordered to be paid by a court. Is the private attorney or private vendor authorized under this section of the Code of Criminal Procedure to collect fines referred to in the opinion

Page 2  
Ms. Susan Gursky  
Office of the Attorney General  
December 27, 2001

request as an "acceptable" fine "suggested" by the Justice of the Peace as a debt or accounts receivable.


In researching this matter, I have reviewed attorney general opinion WW-1504. Opinion No. WW-1504 includes definitions of "indebtedness" and "debt" and concludes that there is no debt or indebtedness under the facts of the opinion since the amount had not been "definitely ascertained". The opinion further provides that a debt would arise only when "a court of competent jurisdiction" should enter a "final judgment establishing such a definite sum".

The procedures for processing cases in the Justice courts are set out in Articles 45.001 et seq. of the Texas Code of Criminal Procedure. The judgment in the Justice Court is described in Article 45.041 and requires all judgments, sentences and final orders to be rendered in open court. Article 45.012 provides that an electronically recorded judgment has the same force and effect as a written signed judgment. There is no provision for trial in the absence of the defendants, and therefore no final judgment in the case when there is no appearance by the defendant.

It is my conclusion that an acceptable fine suggested by a Justice of the Peace which fine would be acceptable to the Justice of the Peace and which has been established with no appearance by the defendant in the criminal case, is not a debt or accounts receivable that may be collected by a private attorney or a private vendor under Article 103.0031 of the Texas Code of Criminal Procedure.

Thank you for your attention to the response to this request.

Yours very truly,

  
ROBERT B. SCHESKE

RBS:rr