

Office of the County Attorney

Rains County, Texas

Robert F. Vititow, County Attorney
Amy Wallace, Investigator

220 W. QUITMAN * POST OFFICE BOX 1075 * EMORY, TEXAS 75440
TELEPHONE (903) 474-9999 * TELECOPIER (903) 474-110

Marti Cole, Legal Assistant
Carolyn Hasten, Legal Assistant

May 3, 2005

FILE # ML-44210-05

I.D. # 044210

VIA CERTIFIED MAIL # 7004 2890 0000 1889 0130

RETURN RECEIPT REQUESTED

RECEIVED

The Honorable Greg Abbot
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RECEIVED

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OPINION COMMITTEE

OPEN RECORDS DIVISION

Re: Request for Attorney General Opinion on Applicability of Sec. 51.601 of the Texas Government Code

Pursuant to Sec. 402.043 of the Texas Government Code, I submit the following questions and brief to your office:

Questions

Can a county clerk collect a fee pursuant to Sec. 51.601 of the Texas Government Code when the county court has neither a full-time court reporter nor a contract with a court reporter to exclusively use that reporter's service?

Is a court considered to have an official court reporter for purposes of Sec. 51.601 of the Texas Government Code when the court does not have a full-time court reporter but instead secures the services of various court reporters as independent contractors when needed?

Brief

In our situation, we only use the services of a court reporter in our county court when requested by attorneys or parties acting pro se. Consequently, we have neither a full-time or part-time reporter nor a contract with any specific reporter to use only that reporter's service. We do, however, contract with various court reporters on an independent contractors basis as the need arises.

Currently, Section 51.601 of the Texas Government Code provides as follows:

- (a) The clerk of each court that has an official court reporter shall collect a court reporter service fee of \$15 as a court cost in each civil case filed with the clerk to maintain a court reporter who is available for assignment in the court.
- (b) The clerk shall collect this fee in the manner provided for other court costs and shall deliver the fee to the county treasurer, or the person who performs the duties of the county treasurer, of the county in which the court sits. The county

treasurer, or the person who performs the duties of the county treasurer, shall deposit the fees received into the court reporter service fund.

(c) The commissioners court of the county shall administer the court reporter service fund to assist in the payment of court-reporter-related services, that may include maintaining an adequate number of court reporters to provide services to the courts, obtaining court reporter transcription services, closed-caption transcription machines, Braille transcription services, or other transcription services to comply with state or federal laws, or providing any other service related to the functions of a court reporter.

(d) The commissioners court shall, in administering the court reporter service fund, assist any court in which a case is filed that requires the payment of the court reporter service fee.

(e) This section does not apply to an action brought to collect delinquent taxes.

Tex. Gov't. Code Ann. § 51.601(a) (Vernon Supp.2004).

Previously, Section 51.601 of the Texas Government Code required a record to be made by a reporter before the fee was assessed. Specifically, it provided as follows:

The clerk of each court that has an official court reporter shall collect a court reporter fee of \$15 as a court cost in each civil case in which a record of evidence presented in the case is made by the reporter....

Tex. Gov't. Code Ann. § 51.601(a) (Vernon Supp.1994).

Although the statute has done away with the requirement of the making of a record, in my opinion, the plain language of the statute appears to require that the court have an official reporter before collecting the fee, but it would seem to me that the legislative intent would have been to help all counties defray the cost of court reporters—whether employed as a full-time employee or on an independent contractor basis.

I would appreciate a response to this request for an opinion at your earliest opportunity.

Respectfully,



Robert F. Vititow
Rains County Attorney