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OPEN RECORDS DIVISION

Susan D. Reed  
Criminal District Attorney  
Bexar County, Texas  
March 15, 2007

RECEIVED  
MAR 19 2007  
OPINION COMMITTEE

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

(via CMRRR##7006 0810 0000 6083 7143)

**RQ-0577-GA**

FILE # HL-45170-07  
I.D. # 045170

RE: 2005 Amendment to Local Government Code Chapter 133 requiring the clerk of the district, statutory county court, or county courts to collect a \$37 filing fee for support of the judiciary.

Dear Attorney General Abbott:

I respectfully request an Attorney General's opinion on the following issue:

Does Local Government Code § 133.154 require the collection of the \$37 filing fee in cases filed in the statutory probate courts, including mental health cases?

**House Bill 11**

In 2005, the Texas Legislature adopted House Bill 11 ("HB 11"). HB 11 amended Local Government Code Chapter 133, Government Code Chapter 101, and other statutes that relate to the compensation of state and county judges, retirement benefits, and providing funds for court-related purposes. Specifically, it amended Local Government Code Chapter 133 by adding § 133.154 which states:

In addition to other fees authorized or required by law, the clerk of a **district court, statutory county court, or county court** shall collect a fee of \$37 on the filing of **any civil suit** to be used for court-related purposes for the support of the judiciary.<sup>1</sup>

<sup>1</sup> Adding § 133.154 required amending an introductory provision of Chapter 133, § 133.004, which lists the fees covered in Chapter 133. The amendment states that Chapter 133 applies to "the filing fee for the judicial fund imposed in district court, statutory county court, and county court under Section 133.154."

March 15, 2007

HB 11 added the following provisions to Government Code Chapter 101:

**101.062 District Court Fees: Additional Filing Fee For Support of the Judiciary.** The clerk of a district court shall collect on the filing of a civil suit an additional filing fee of \$37 under Section 133.154, Local Government Code, to be used for court-related purposes for the support of the judiciary.

**101.083 Statutory County Court Fees<sup>2</sup>: Additional Filing Fee For Support of the Judiciary.** The clerk of a statutory county court shall collect on the filing of a civil suit an additional filing fee of \$37 under Section 133.154, Local Government Code, to be used for court-related purposes for the support of the judiciary.

**101.123 County Court Fees: Additional Filing Fee For Support of the Judiciary.** The clerk of a county court shall collect on the filing of a civil suit an additional filing fee of \$37 under Section 133.154, Local Government Code, to be used for court-related purposes for the support of the judiciary.

#### **Statutes not amended by HB 11**

Chapter 101 of the Government Code is entitled *Filing Fees and Other Fees and Costs in Civil Proceeding*. The chapter is divided into 10 subchapters and each subchapter deals with a different level of the judiciary from the Texas Supreme Court to the Municipal Courts. Noteworthy, HB 11 did not amend Subchapter F, *Statutory Probate Court*.

#### **Interpretation of HB 11**

The Texas Comptroller of Public Accounts has posted on its web site the following:

“The 79th Legislature enacted House Bill 11 in the Second Called Session, which increased judicial salaries, and to fund the increase, imposed a new \$37.00 filing fee applicable to ‘the filing of any civil suit.’ The Legislature utilized all-inclusive language, making the new fee applicable to all civil suits regardless of their type or nature. This fee is imposed on all civil suit filings in the district courts, statutory county courts and county courts effective December 1, 2005.”

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<sup>2</sup> Tex. Gov’t Code § 21.009 excludes statutory probate courts from the definition of statutory county court.

March 15, 2007

Richard Craig, Assistant General Counsel for the Texas Comptroller of Public Affairs, wrote an e-mail that was forwarded to this office, opining on the application of HB 11 to probate courts.<sup>3</sup> Quoting from the e-mail, "The new \$37 filing fee imposed under HB 11 states that it applies 'on the filing of any civil suit.' We take that language to mean all civil suits of any type or nature are included. Given that fact, it should be charge in probate cases as well as all other types of civil suits. There are no exceptions in the bill. So, this interpretation represents a 'plain meaning' reading of the words used."

However, Guy Herman, Presiding Statutory Probate Judge, has opined in a letter to Tom Koenig, Director of Mental Health, Bexar County Clerk's Office, that the additional \$37 filing fee authorized by HB 11 should not be collected in cases filed in the statutory probate courts, including mental health cases.<sup>4</sup> Judge Herman supports his position by pointing out that HB 11 never mentions statutory probate courts, even though they are a separate entity from district courts, statutory county courts and county courts under Title 2<sup>5</sup> of the Government Code. Likewise, Local Government Code § 133.004 contains a subsection that addresses certain civil fees in different courts, with specific mention of district, statutory county courts, county courts and statutory probate courts. However, statutory probate courts were not specifically mentioned as the other courts were in the HB 11 amendments to § 133.004 or in the new provision, § 133.154.

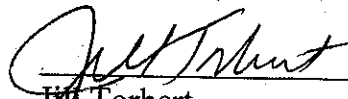
### Conclusion

With due respect to Richard Craig, HB 11 does not plainly state that the \$37 filing fee should be collected on civil filings in statutory probate courts. Therefore, I respectfully request an Attorney General opinion on whether Local Government Code § 133.154 requires the collection of the \$37 filing fee in cases filed in the statutory probate courts, including mental health cases.

Sincerely,

Susan D. Reed  
Bexar County Criminal District Attorney

By:



Jill Torbert  
Assistant Criminal District Attorney-Civil  
300 Dolorosa, Suite 4049  
San Antonio, Texas 78205-3030  
Telephone No.: (210) 335-2139  
TeleFax No.: (210) 335-2151

<sup>3</sup> Copy of e-mail attached as Exhibit A.

<sup>4</sup> Copy of letter attached as Exhibit B.

<sup>5</sup> Chapter 101 is included in Title 2.

**Torbert, Jill**

**From:** Les Carnes [REDACTED]  
**Sent:** Wednesday, January 03, 2007 5:26 PM  
**To:** Torbert, Jill  
**Subject:** Re: Filing fee \$37 - HB 11

Dear Jill,  
Thank you for your email. This question has been posed before and as I am not an attorney I'll share the response from Richard Craig (agency attorney of the TxCPA):

From an email from Richard Craig to Connie Wade - Gregg County Clerk dated 11/22/2005:

Dear Ms. Wade:

Thank you inquiry. The new \$37 filing fee imposed under HB 11 states that it applies "on the filing of any civil suit." We take that language to mean all civil suits of any type or nature are included. Given that fact, it should be charged in probate cases as well as all other types of civil suits. There are no exceptions in the bill. So, this interpretation represents a "plain meaning" reading of the words used.

You may wish to consult with your own county attorney if you need additional clarification. We cannot add much more to the wording the Legislature has chosen.

Sincerely,  
Richard Craig  
Assistant General Counsel  
Agency Affairs

I hope this resolves your questions, if you need further assistance please feel free to contact me at 512/475-0045 or via email, [leslie.carnes@cpa.state.tx.us](mailto:leslie.carnes@cpa.state.tx.us).

Sincerely,  
Les Carnes

On 1/3/07 3:27 PM, "Torbert, Jill" [REDACTED]

As a follow-up to an earlier email:

I thought I might provide some statutory provisions that might help solve this issue.

1. Local Government § 133.04 mentions the different courts, including statutory probate court, in 133.004(6).
2. Government Code sections were amended that addressed district courts, statutory county courts, and county courts, but not statutory probate courts. There is a section in the Gov't Code that addresses probate courts, so the Leg. could have specifically added a section for the \$37.00 for probate courts. See Gov't Code §§ 101.101 and 101.102.

3. Government Code § 21.09 specifically excludes statutory probate courts from the definition of statutory county courts.

Hope this helps.  
Jill

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Sender: Jill Torbert, Bexar County Assistant Criminal District Attorney, 300 Dolorosa, San Antonio, Texas 78205, 210-335-3920, [jtorbert@co.bexar.tx.us](mailto:jtorbert@co.bexar.tx.us)

-----Original Message-----

**From:** Torbert, Jill  
**Sent:** Wednesday, January 03, 2007 2:49 PM  
**To:** [REDACTED]  
**Subject:** Filing fee \$37

Hello,

# STATUTORY PROBATE COURTS



STATE OF TEXAS

Guy Herman, Presiding Statutory Probate Judge

P.O. Box 1748, Austin, TX 78767  
1000 Guadalupe Street, Room 217  
Phone: (512) 854-9258  
Fax: (512) 854-4418

August 28, 2006

Tom Koenig, Director of Mental Health  
Bexar County Clerk's Office  
100 Dolorosa, Suite 104  
San Antonio, TX 78205

Re.: \$37.00 filing fee added by House Bill 11 in the last legislative session

Dear Mr. Koenig:

At your request, I am writing this opinion about the \$37.00 filing fee added in the last legislative session by House Bill 11. As Presiding Statutory Probate Judge, it is my opinion that the \$37.00 additional filing fee authorized by H.B. 11 for support of the judiciary should not be collected in cases filed in the Statutory Probate Courts of Texas, including mental health cases.

In amending both the Government Code and the Local Government Code, H.B. 11 referred to filing fees only in "district court," "statutory county court," and "county court." "Statutory probate courts" were never mentioned in connection with the new fee despite the fact that Title 2 of the Texas Government Code recognizes "statutory probate courts" as separate entities from "district courts," "statutory county courts," and "county courts." See Gov. Code § 21.09. Although HB 11 didn't include statutory probate courts within its amendments to various statutes, these statutes do list statutory probate courts separately from the other three types of courts as follows:

In Chapter 101 of the Government Code, Subtitle I concerning "Court Fees and Costs" addresses these courts in four separate subchapters:

- Subchapter D = District Court Fees and Costs
- Subchapter E = Statutory County Court Fees and Costs
- Subchapter F = Statutory Probate Court Fees and Costs
- Subchapter G = County Court Fees and Costs

Likewise, Subchapter H of Chapter 51 of the Government Code currently addresses "Additional Filing Fee for Judicial Fund" as follows:

- § 51.702 = Additional Fees and Costs in Certain Statutory County Courts
- § 51.703 = Additional Fees and Costs in Certain County Courts
- § 51.704 = Additional Fees and Costs in Certain Statutory Probate Courts

Section 133.004 of the Local Government Code does have a subsection that addresses "certain statutory probate courts," but "statutory probate courts" are not included either in the language that H.B. 11 adds to § 133.004 or in new § 133.154.

Sincerely,

Guy Herman  
Presiding Statutory Probate Judge

Cc:  The Hon. Polly Jackson Spencer  
 The Hon. Tom Rickhoff



RQ-0577-GA

**RECEIVED**

MAY 11 2007

**OPINION COMMITTEE**

**JOHN R. ROACH**  
CRIMINAL DISTRICT ATTORNEY  
COLLIN COUNTY COURTHOUSE  
210 S. McDONALD, SUITE 324  
McKINNEY, TEXAS 75069  
972-548-4323  
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April 16, 2007

FILE # ML-45216-07

I.D. # 45216

Honorable Greg Abbott  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

RE: Assessment of Fees under Local Government Code Section 133.154

Dear Attorney General Abbott:

I am requesting an Attorney General's written opinion pursuant to Government Code §402.043.

I am asking for your opinion on whether the Collin County Clerk should collect the \$37 fee enacted by the Legislature in 2005 under Local Government Code Section 133.154 to suits filed in a statutory probate court? After reviewing the law I am of the opinion that there are arguments both for and against statutory probate courts collecting this fee. Although I find the arguments against more persuasive, I have found nothing dispositive on this issue. I am also concerned by the lack of uniformity in which this statute is being applied. A survey of some surrounding counties revealed that three counties do not collect the fee for suits filed in a statutory probate court and two counties do collect the fee.

**I. LOCAL GOVERNMENT CODE SECTION 133.154 (2005)**

**ADDITIONAL FILING FEE IN DISTRICT COURT, STATUTORY COUNTY COURT, OR COUNTY COURT FOR THE SUPPORT OF JUDICIARY**

(a) In addition to other fees authorized or required by law, the clerk of a district court, statutory county court, or county court shall collect a fee of \$37 on the filing of any civil suit to be used for court-related purposes for the support of the judiciary.

(b) The treasurer shall remit the fees collected under this section to the comptroller in the manner provided by Subchapter B. The comptroller shall deposit the fees in the judicial fund.

**II. ARGUMENTS WHICH INDICATE THE STATUTORY PROBATE COURT SHOULD NOT COLLECT THE FEE UNDER L.G.C. SECTION 133.154**

**A. PLAIN LANGUAGE OF THE STATUTE**

The plain language of the statute specifically states “district court, statutory county court and county court,” but does not include statutory probate courts.

Texas Government Code Section 21.009 (1991) defines “county court” as a court created in each county by Article V, Section 15, of the Texas Constitution. It defines “statutory county court” as a county court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, county criminal courts, county criminal courts of appeals and county civil courts of law, but does not include statutory probate courts as defined by Section 3, Texas Probate Code.

If we use the definitions from the Government Code for the Local Government Code then a statutory probate court would not fall under a county court or a statutory county court.

In reviewing the Texas statutes I never found an instance in which a statutory probate court was referred to as a statutory county court. The Texas statutes I have found always distinguish between a “statutory probate court” and a “statutory county court.”

**B. THERE IS A SPECIFIC STATUTE FOR STATUTORY PROBATE COURTS**

GOVERNMENT CODE 51.704 (2005)

ADDITIONAL FEES IN CERTAIN STATUTORY PROBATE COURTS

- (a) Except as provided by subsection (f), in addition to all other fees authorized or required by law, the clerk of a statutory probate court shall collect a \$40 filing fee in each probate, guardianship, mental health, or civil case filed in the court to be used for court-related purposes for the support of the judiciary.
- (b) The clerk shall deposit the fees collected under this section to be sent to the comptroller as provided by Subchapter B, Chapter 133, Local Government Code. The comptroller shall deposit the fees in the judicial fund.

This statute is virtually identical to L.G.C. Section 133.154, but specifically applies to Statutory probate courts.

C. **COUNTY COURTS, STATUTORY COUNTY COURTS AND DISTRICT COURTS HAVE COMPANION STATUTES UNDER THE GOVERNMENT CODE DIRECTING THEM TO COLLECT THE FEE SET OUT IN L.G.C. SECTION 133.154 AND THE STATUTORY PROBATE COURTS DO NOT HAVE A DIRECTIVE UNDER THE GOVERNMENT CODE TO COLLECT THE SECTION 133.154 FEES**

GOVERNMENT CODE SECTION 101.123

COUNTY COURT FEES: ADDITIONAL FILING FEE FOR SUPPORT OF JUDICIARY

The clerk of a county court shall collect on the filing of a civil suit an additional filing fee of \$37 under Section 133.154 Local Government Code, to be used for court-related purposes for the support of the judiciary.

GOVERNMENT CODE SECTION 101.083

STATUTORY COUNTY COURT FEES: ADDITIONAL FILING FEE FOR SUPPORT OF JUDICIARY

The clerk of a statutory county court shall collect on the filing of a civil suit an additional filing fee of \$37 under Section 133.154, Local Government Code, to be used for court-related purposes for the support of the judiciary.

GOVERNMENT CODE SECTION 101.062

DISTRICT COURT FEES: ADDITIONAL FILING FEE FOR SUPPORT OF JUDICIARY

The clerk of a district court shall collect on the filing of a civil suit an additional filing fee of \$37 under Section 133.154, Local Government Code, to be used for court-related purposes for the support of the judiciary.

D. **THE \$37 FEE WAS NOT ADDED TO THE LAUNDRY LIST OF FEES FOR STATUTORY PROBATE COURTS, BUT THE FEE UNDER G.C. SECTION 51.704 WAS ADDED**

GOVERNMENT CODE SECTION 101.101

STATUTORY PROBATE COURT FEES AND COSTS

(3) additional filing fees as follows:

(A) for certain cases to be used for court-related purposes for support of the judiciary, if authorized by the county commissioner's court (Sec. 51.704, Government Code)...\$40



**E. THE FEE IS NOT INCLUDED IN ANY OTHER STATUTE THAT LISTS FEES FOR STATUTORY PROBATE COURTS**

GOVERNMENT CODE SECTION 101.102  
STATUTORY PROBATE COURT FEES AND COSTS IN OTHER PROBATE MATTERS (L.G.C. Section 133.154 fee not listed)

LOCAL GOVERNMENT CODE SECTION 118.064  
ADDITIONAL FEE IN ORIGINAL PROBATE ACTION  
(L.G.C. Section 133.154 fee not listed)

**F. GOVERNMENT CODE SECTION 133.004 MAKES A DISTINCTION BETWEEN STATUTORY PROBATE COURTS AND OTHER COURTS REGARDING THE FEES TO BE PAID TO THE COMPTROLLER**

LOCAL GOVERNMENT CODE 133.004 (2005)  
CIVIL FEES

This chapter applies to the following fees:

(6) The filing fees for the judicial fund imposed in certain statutory probate courts under Section 51.704, Government Code;

(7) The filing fee for the judicial fund imposed in district, statutory county court, and county court under Section 133.154.

**III. ARGUMENTS WHICH INDICATE THE STATUTORY PROBATE COURT SHOULD COLLECT THE FEE UNDER L.G.C. SECTION 133.154**

**A. THE PROBATE CODE USES THE TERMS "COUNTY COURT" AND "PROBATE COURT" SYNONYMOUSLY**

V.A.T.S. PROBATE CODE SECTION 3

(e) "County Court" and "Probate Court" are synonymous terms and denote county courts in the exercise of their probate jurisdiction, courts created by statute.

This provision is limited to the Probate Code and does not even use the term Statutory Probate Court. It is worthy of note because it is a circumstance in which a statute refers to a Probate Court as a "County Court".

**B. THE CODE OF JUDICIAL CONDUCT INCLUDES THE JUDGE OF A STATUTORY PROBATE COURT IN THE DEFINITION OF "STATUTORY COUNTY COURT JUDGE"**

V.T.C.A., GOVERNMENT CODE T. 2, SUBT. G APP. B, JUD. CONDUCT, CANON 8 CONSTRUCTION AND TERMINOLOGY OF THE CODE

**B. Terminology**

15. "Statutory County Court Judge" means the judge of a county court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, statutory probate courts, county criminal courts, county criminal courts of appeals, and county civil courts at law.

**C. GOVERNMENT CODE SECTIONS HAVE CATCH ALL LANGUAGE AUTHORIZING A STATUTORY PROBATE COURT TO ASSESS THE SAME FEES AS COUNTY JUDGES' FEES.**

GOVERNMENT CODE SECTION 25.0029

**FEES**

A judge of a statutory probate court shall assess the same fees as are prescribed by law relating to county judges' fees. The clerk of the court shall collect the fees and pay them into the county treasury on collection. A fee may not be paid to the judge.

GOVERNMENT CODE SECTION 101.101

**STATUTORY PROBATE COURT FEES AND COSTS**

(24) A fee not otherwise listed in this section that is required to be collected under Section 25.0029, Government Code...as prescribed by law relating to county judges' fees.

These fees apply to a "judge" and not specifically to the filing of documents as in L.G.C. Section 133.154.

**D. PROBATE CODE SECTION 12 HAS A CATCH ALL PROVISION FOR CIVIL COURT COSTS**

PROBATE CODE SECTION 12

**COSTS AND SECURITY THEREFOR**

**(a) Applicability of Laws Regulating Costs.**

The provisions of law regulating costs in ordinary civil cases shall apply to all matters in probate when not expressly provided for in this Code.

E. **THE ATTORNEY GENERAL'S OFFICE HAS IN THE PAST FOUND A FEE APPLIED TO A STATUTORY PROBATE COURT WHEN THE PLAIN LANGUAGE OF THE STATUTE STATED "COUNTY COURT, COUNTY COURT AT LAW OR DISTRICT COURT"**

LOCAL GOVERNMENT CODE SECTION 291.008  
FEE FOR SECURITY

(a) The commissioners court may set a fee not to exceed \$5 to be collected at the time of filing in each civil case filed in a county court, county court at law, or district court which shall be taxed as other costs. The county is not liable for costs.

Op. Atty. Gen. 1994, No. DM 283

The Attorney General stated that the legislature did not intend to differentiate between a fee charged for a probate matter filed in a county court, county court at law or district court and a fee charged in a statutory probate court. The Attorney General was of the opinion that the commissioner's court could charge a \$5 fee for cases filed in a statutory probate court.

F. **THE LEGISLATURE HAS IN THE PAST AMENDED PROVISIONS OF THE LAW TO ADD FEES FOR STATUTORY PROBATE COURTS WHICH THEY HAD INADVERTENTLY EXCLUDED**

LOCAL GOVERNMENT CODE SECTION 133.153  
ADDITIONAL FILING FEES FOR CERTAIN ACTIONS AND PROCEEDINGS IN COURTS OTHER THAN DISTRICT COURT FOR BASIC CIVIL LEGAL SERVICES FOR INDIGENTS

(a) In addition to other fees authorized or required by law, the clerk of a court other than a district court, the courts of appeals, or the supreme court shall collect the following fees on the filing of any civil action or proceeding requiring a filing fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee:

- (1) \$5 for statutory and constitutional county courts; and
- (2) \$2 for justice of the peace courts.

GOVERNMENT CODE 101.101 (2005)  
STATUTORY PROBATE COURT FEES AND COSTS

(3) additional filing fees as follows:

(C) for filing any civil action or proceeding requiring a filing fee, including an appeal, and on the filing of any counterclaim, cross-action, intervention, interpleader, or third-party action requiring a filing fee to fund civil legal services for the indigent (Sec. 133.153, Local Government Code)...\$5)

Reviser's Note

(2) Section 101.101(3), Government Code, is corrected by adding the additional filing fee for civil actions under Section 133.153, Local Government Code, that was inadvertently omitted from the fees to be collected by the clerk of a statutory probate court.

Even though this provision did not on its face apply to statutory probate courts, the legislature amended the statute to include statutory probate courts. This indicates a legislative intent to include statutory probate courts in fee assessment statutes, but a history of inadvertently omitting them.

#### IV. SUMMATION

The plain language of L.G.C. Section 133.154 does not include statutory probate courts. The Government Code specifically excludes "statutory probate courts" from "county courts" and "statutory county courts." References to statutory probate courts in Texas statutes usually refer to them as "statutory probate courts".

In addition there is a specific statute (Government Code Section 51.704) that was enacted for statutory probate courts which assesses a similar fee for the same purpose. G.C. Section 51.704 was added to the laundry list of fees collectable by statutory probate courts and L.G.C. Section 133.154 is not included in any of the statutes which summarize fees assessable by statutory probate courts.

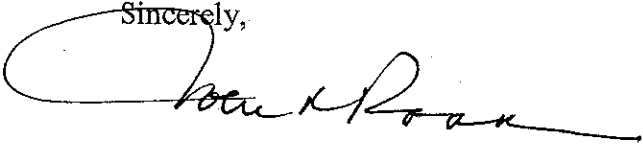
Although "statutory county courts" and "statutory probate courts" are not used interchangeably, the Probate Code has used "county court" and "probate court" interchangeably. Likewise the Government Code has used the term "statutory county court judge" to include "statutory probate court judges".

Both the Government Code and the Probate Code contain "catch all" language for statutory probate courts which allows those courts to collect all fees relating to county judges and costs regulating ordinary civil cases.

Finally the Attorney General's Office has interpreted fee statutes that did not specifically include probate courts as applying to them as well. The legislature has in the past gone back and amended fee statutes to include statutory probate courts where the statute did not specifically include them.

I appreciate your help in this matter. If you have any questions regarding this request, feel free to contact me at my office.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Roach". The signature is written in a cursive style with a large, looping initial "J".

**John R. Roach**  
Criminal District Attorney  
Collin County, Texas