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OPINION COMMITTEE

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November 5, 2013

RQ-1162-GA

The Honorable Greg Abbott
Attorney General
State of Texas
209 W. 14th Street, 8th Floor
Austin, TX 78701-1614

Re: Attorney General Opinion request relating to the scope of Government Code Section 51.607(a)

Dear General Abbott:

The Comptroller of Public Accounts (Comptroller) respectfully requests an Attorney General Opinion relating to the scope of Government Code Section 51.607(a).

Government Code Section 51.607(a) provides:

Following each regular session of the legislature, the comptroller shall identify each law enacted by that legislature, other than a law disapproved by the governor, that imposes or changes the amount of a court cost or fee collected by the clerk of a district, county, statutory county, municipal, or justice court from a party to a civil case or a defendant in a criminal case, including a filing or docketing fee, jury fee, cost on conviction, or fee or charge for services or to cover the expenses of a public official or agency. This subsection does not apply to attorney's fees, civil or criminal fines or penalties, or amounts charged, paid, or collected on behalf of another party to a proceeding other than the state in a criminal case, including restitution or damages.

As the administering agency, the Comptroller is responsible for publishing a list in the Texas Register no later than August 1 after the end of the regular session of the legislature at which the law imposing or changing the amount of the cost or fee was enacted. (See Section 51.607(b))

The Comptroller, in the listing it publishes in the Texas Register, has historically interpreted Section 51.607(a) to apply to two different categories of costs and fees. The first category, as set out in Section 51.607(a), are "court cost[s] or fee[s] collected by the clerk of a district, county, statutory county, municipal, or justice court from a party to a civil case or a defendant in a



The Honorable Greg Abbott
November 5, 2013
Page 2

criminal case, including a filing or docketing fee, jury fee, cost on conviction..." The second category of fees or charges published in the list are "fee[s] or charge[s] for services or to cover the expenses of a public official or agency."

The Comptroller has consistently interpreted the phrase "fee or charge for services or to cover the expenses of a public official or agency" to include fees that are set and collected by a county clerk if those fees are for services or to cover the expenses of the local governmental entity.

This past session the Legislature enacted House Bill 1513 (Acts of May 21, 2013, 83rd Leg., R.S., ch. 927, 2013 Tex. Sess. Law Serv. 2304) which among other things increased the Records Management and Preservation Fee (contained in Local Government Code Section 118.011) from \$5 to \$10. This fee is set and collected by the county clerk and imposed on a person that files documents with the county clerk.

The Comptroller included House Bill 1513, and in particular the increase in the Records Management and Preservation Fee, in the list it published in the Texas Register. Local Government Code Section 118.01216(d) provides that "The fee may be used only to provide funds for specific records management and preservation, including automation purposes." In addition, the bill analysis for the legislation that created the records management and preservation fee (originally enacted by the 72nd Legislative in Senate Bill 770) provides that "...the fee may only be used for specific records preservation and automated projects." (http://www.lrl.state.tx.us/LASDOCS/72R/SB770/SB770_72R.pdf#page=26) Both the express statutory language and the bill analysis support the conclusion that the Records Management and Preservation fee is intended to help local governments maintain and digitize court records which is clearly an expense of a public official or agency.

A question has been raised by interested individuals and local governmental entities that Section 51.607(a) only extends to court costs and fees that are collected by the clerk of a district, county, statutory county, municipal, or justice court, and does not apply to any fees or costs not collected by a clerk of one of the listed courts. The Comptroller does not share this interpretation and is of the opinion that the trailing clause in Section 51.607(a) ("or fee or charge for services or to cover the expenses of a public official or agency") includes all other fees or charges not collected by a clerk of a court including those fees or charges for services or to cover expenses of a public official or agency. The Records Management and Preservation fee is intended to help local governments maintain and digitize court records which is clearly an expense of a public official or agency.




The Honorable Greg Abbott
November 5, 2013
Page 3

The Comptroller is seeking this Attorney General opinion to clarify the scope of Section 51.607(a) because subsection (c) requires the collection date of the court costs or fees that are included on the list to begin the next January 1 after the law takes effect notwithstanding the effective date in the law imposing or changing the court cost or fee. Whether a court cost or fee is included or excluded from this Texas Register listing may cause a court cost or fee to be collected prematurely or may cause the court cost or fee to be collected after its intended collection date.

Thank you for your consideration in this matter. If you need more information, please contact the Comptroller's General Counsel, Ashley Harden, at 512-463-7067.

Sincerely,



Martin A. Hubert
Deputy Comptroller

