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OPINION COMMITTEE



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## OFFICE OF COURT ADMINISTRATION

DAVID SLAYTON  
Administrative Director

December 5, 2013

**RQ-1171-GA**

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

Re: Request for opinion on questions concerning criminal court costs.

Dear General Abbott:

We seek your opinion on several questions regarding criminal court costs. Our questions concern the:

- (1) distribution of court costs assessed in appeals from municipal courts;
- (2) assessment of court costs in a single case with convictions on multiple counts;
- (3) award of credit toward fines and court costs for time served pursuant to a capias pro fine;
- (4) imposition of costs when multiple warrants result in a single arrest; and
- (5) levy of court costs for commitment and release.

### I. Distribution of Court Costs Assessed in Appeals from Municipal Courts

#### *Background*

When a defendant is convicted of a criminal offense in a municipal court, the defendant is typically ordered to pay court costs. The court costs to be assessed against the defendant are summarized in a chart prepared by our office entitled "Municipal Court Convictions Court Cost

Chart.”<sup>1</sup> Some of the court costs are directed to the State; others are retained by the city. None of the court costs are directed to the county.

When a defendant is convicted of a criminal offense in a county-level court, the defendant is also typically ordered to pay court costs. The court costs to be assessed against the defendant are summarized in a chart prepared by our office entitled “County Clerk’s Misdemeanor Court Cost Chart – Original Jurisdiction.”<sup>2</sup> Some of the court costs are directed to the State; others are retained by the county. None of the court costs are directed to the city.

All appeals of convictions in the municipal courts are heard in county-level courts. These appeals take two forms depending on whether the appeal is from a municipal court of record or from a regular municipal court.<sup>3</sup> Appeals from municipal courts of record are made on the basis of trial court errors that are reflected in the record.<sup>4</sup> Appeals from regular municipal courts are by trial de novo.<sup>5</sup> Article 44.17 of the Code of Criminal Procedure makes this clear:

In all appeals to a county court from . . . municipal courts other than municipal courts of record, the trial shall be de novo in the trial in the county court, the same as if the prosecution had been originally commenced in that court. An appeal to the county court from a municipal court of record may be based only on errors reflected in the record.<sup>6</sup>

If the defendant’s appeal is successful, he or she will owe no court costs.<sup>7</sup> But if the defendant’s appeal is unsuccessful, the defendant will be ordered to pay court costs. At this point, things become cloudy and we seek your guidance.

#### *Questions on Appeals from Municipal Courts of Record*

As mentioned earlier, the appeal of a criminal conviction arising out of a municipal court of record is pursued on the basis of errors in the trial court record. There is no new trial. Accordingly, if the county-level court (acting as an appellate court) finds no error in the record, the judgment of the municipal court will be affirmed. Assuming that the judgment is affirmed, an initial question arises:

- (1) Are the court costs the defendant owes simply the exact same court costs that were assessed in the municipal court? Or does the defendant owe additional costs that are assessed for convictions in county-level courts such as the \$40 court cost assessed for the services of the county clerk under article 102.005 of the Code of Criminal Procedure?

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<sup>1</sup> The chart is available online at <http://www.courts.state.tx.us/pdf/MuniCourtConvictionsCourtCostChart.pdf>.

<sup>2</sup> The chart is available online at <http://www.courts.state.tx.us/oca/pdf/CoClerkkMisdCtCst-OrigJurisdiction.pdf>.

<sup>3</sup> In referring to “regular municipal courts,” we simply mean municipal courts that are not municipal courts of record.

<sup>4</sup> See Tex. Gov’t Code Ann. § 30.00014(b) (West Supp. 2012).

<sup>5</sup> Tex. Code Crim. Proc. Ann. art. 45.042(b) (West 2006). “

<sup>6</sup> Tex. Code Crim. Proc. Ann. art. 44.17 (West 2006).

<sup>7</sup> A defendant owes court costs only upon conviction.

We believe the answer to question one is that the defendant owes only the court costs that were assessed in the municipal court because the county-level court did not *convict* the defendant. Rather the county-level court simply *affirmed the conviction* of the municipal court of record.

We have a second question about judgments from municipal courts of record that are affirmed on appeal:

(2) Is any part of the court costs collected from the defendant directed to the county?

We believe the answer is “no.” Our thought is that the situation is the same as an original conviction in either type of municipal court. Some of the court costs are directed to the State; others are retained by the city. None of the court costs are directed to the county.

We also have a third question concerning judgments from municipal courts of record that are affirmed on appeal:

(3) Which entity (city or county) is responsible for collecting the court costs and directing the court costs intended for the State to the Comptroller?

We believe the responsible party is the city because the municipal court is the convicting entity; the county court merely affirmed the municipal court conviction.

#### *Questions on Appeals from Regular Municipal Courts*

As mentioned earlier, the appeal of a criminal conviction arising out of a regular municipal court is handled de novo. In other words, there is a brand new prosecution as if there had never been any prosecution in the regular municipal court. Assuming that the county-level court finds the defendant guilty, we are faced with our fourth question:

(4) Are the court costs the defendant owes those that should be assessed for a conviction in county court? For example, would the defendant owe the \$4 county and district court technology fee under Article 102.0169 of the Code of Criminal Procedure instead of the municipal court technology fee of not more than \$4 called for by Article 102.0172 of the same code?

We believe the answer is “yes” because the county court *convicted* the defendant. The regular municipal court did not end up convicting the defendant; the conviction of the defendant in the regular municipal court essentially became a nullity when the defendant appealed.

We have a fifth question. This question assumes that the judgment of a municipal court is appealed to a county-level court and that the appellant is convicted in the county-level court. The question is as follows:

(5) Is any part of the court costs collected from the county directed to the city?

We believe the answer is no. Our thought is that the situation is the same as an original conviction in a county-level court. Some of the court costs are directed to the State; others are retained by the county. None of the court costs are directed to the city.

Finally, we ask a sixth question. As in the immediately preceding question, we assume that the judgment of a municipal court is appealed to a county-level court and that the appellant is convicted in the county-level court. The question is as follows:

- (6) Which entity (city or county) is responsible for collecting the court costs and directing the court costs intended for the State to the Comptroller?

We believe the responsible party is the county because the county-level court is the convicting entity; the conviction in the regular municipal court becomes a nullity upon appeal.

We note that our office has published a "County Clerk's Misdemeanor Court Cost Chart – Appeals from Municipal Courts."<sup>8</sup> We do not suggest that your office look to this document for guidance. There probably needs to be one chart for appeals from municipal courts of record and another chart for regular municipal courts. We seek guidance from your office in an effort to produce a correct court costs chart (or charts) in regard to appeals from municipal courts.

## **II. Assessment of Court Costs in a Single Case with Convictions on Multiple Counts**

In 2008, the Court of Criminal Appeals decided the case of *State v. Crook*, 248 S.W.3d 172 (Tex. Crim. App. 2008). The Court of Criminal Appeals summarized the case as follows:

A jury convicted appellee in a single criminal action of thirteen counts of barratry, which arose out of the same criminal episode. The jury assessed punishment on each count at 10 years confinement with a recommendation of community supervision (probation) for this portion of appellee's sentence. The jury also assessed a \$10,000 fine on each count with no recommendation of probation for this portion of appellee's sentence. The trial court placed appellee on probation for seven years on each count and ordered these periods of probation to run concurrently. Over the State's objection, the trial court also ordered the \$10,000 fines to run concurrently. The state appealed, claiming that this portion of appellee's sentence is illegal, because the trial court was required to order the fines to run consecutively instead of concurrently. The court of appeals rejected this claim, and we granted review.

*Id.* at 173.

Essentially, the trial court ordered the defendant to pay only a \$10,000 fine. The State, however, believed the defendant should have been ordered to pay a total of \$130,000 in fines (13 counts x \$10,000 per count = \$130,000).

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<sup>8</sup> Available at <http://www.courts.state.tx.us/oca/pdf/CoClerkMisdCtCst-AppfromMuniCl.pdf>.

In a plurality opinion, the Court of Criminal Appeals affirmed the judgment of the court of appeals which had upheld the trial court's order. The defendant was only required to pay a single \$10,000 fine.

We have set out the foregoing details of the *Crook* opinion to set the stage for our question. The question does not concern fines, but instead concerns court costs. Our question is as follows:

When a defendant is convicted of multiple counts of an offense in a single criminal action, should court costs be assessed on each count? For example, if, as in *Crook*, a defendant is convicted of thirteen counts of an offense, should the applicable court costs be assessed thirteen times?

We note that most court costs are assessed upon conviction. *See e.g.*, Tex. Loc. Gov't Code Ann. § 133.105 (West 2008) ("person convicted of any offense . . . shall pay as a court cost"); Tex. Transp. Code Ann. § 542.403 (West 2011) ("person convicted of a misdemeanor . . . shall pay \$3 as a cost of court"). Statutes imposing costs like these seem to call for the imposition of court costs on each count of a case involving convictions on multiple counts.

Some court costs, however, speak of the costs being assessed for the services in a particular "case." *See e.g.*, Tex. Code Crim. Proc. Ann. art. 102.011 (West Supp. 2012) (fees for "services performed in the case by a peace officer"). Others speak of the imposition of a court cost for an event that happens one time in a case, regardless of the number of counts. *See e.g.*, Tex. Code Crim. Proc. Ann. art. 102.004 (West 2006) (jury fee to be paid upon conviction by a jury). Statutes like these seem to envision the assessment of the cost just one time, regardless of the number of counts.

In light of the foregoing two paragraphs, we ask a further question:

Are certain court costs to be assessed on each count while others are to be assessed only once per case?

### **III. Award of Credit Toward Fines and Court Costs for Time Served Pursuant to a Capias Pro Fine**

Please note that all statutory references in this section of the request are to the Texas Code of Criminal Procedure.

When a criminal defendant is convicted of a crime, he or she is generally ordered to pay a fine and court costs. If the defendant fails to pay the fine and costs, the convicting court may order that the defendant be arrested on a *capias pro fine*. *See* Article 45.045 (relevant to justice and municipal courts); *see also* Articles 43.015 and 43.05 (relevant to district and county-level courts). A *capias pro fine* commands law enforcement:

to bring the defendant before the court immediately or place the defendant in jail until the business day following the date of the defendant's arrest if the defendant cannot be brought before the court immediately.

*See* Article 45.045(a) (justice and municipal courts); *see also* Article 43.05 (district and county-level courts).

Once the defendant is brought before the court, the judge is to hold a hearing. *See* Article 45.046 (justice and municipal courts); *see also* Article 43.03(d) (district and county-level courts). At the hearing, the judge decides how to deal with the defendant's non-payment.

A question has arisen concerning those situations in which a defendant is taken to jail instead of being taken immediately before the convicting court. The question is whether the defendant can be given credit toward his or her outstanding fine and court costs for the time spent in jail.

We note that Article 45.041(c) deals with the credit for time served in jail. However, this statute explicitly applies only to time served in jail as provided by Article 42.03. Article 42.03 speaks of giving defendants credit for time served in jail from the time of arrest until sentence. Therefore, neither of the foregoing two statutes would seem to apply to the situation at issue here. This is because in the current situation, the defendant is held in jail after the sentence has been imposed.

#### **IV. Imposition of Costs when Multiple Warrants Result in a Single Arrest**

Article 102.011 of the Code of Criminal Procedure deals with fees assessed against convicted criminal defendants for the services of peace officers. Subsection (a)(2) calls for a fee of "\$50 for executing or processing an issued arrest warrant, capias, or capias pro fine . . . ." Currently, there is uncertainty as to whether separate \$50 fees should be assessed when multiple warrants have been processed that result in one arrest. The following sample situation should serve to clarify the question.

A man who is driving is pulled over by a municipal police officer. The police officer writes a citation charging the driver with the offense of speeding. *See* Transportation Code, Section 545.351. The driver signs the citation, thereby promising to appear before the municipal court by a specified future date to take care of the speeding charge. *See* Transportation Code, Section 543.005. The driver then proceeds on his way.

The future date comes and goes and the man fails to appear before the municipal court. In response, the judge signs a capias for the man's arrest for failing to appear before the court. *See* Code of Criminal Procedure, Article 23.031. Subsequently, the man is charged with the independent criminal offense of violation of promise to appear. *See* Transportation Code, Section 543.009. The municipal judge signs a warrant for the arrest of the man on the violation-of-promise-to-appear charge. Both the capias and the arrest warrant are entered into a databank by the municipal police department. Thus, the capias and the warrant have both been "processed" by law enforcement. *See Court Costs and Fees Handbook for Municipal Courts*, October 2005, p. I-5,

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published by the Office of Court Administration.

Armed with both the *capias* and the arrest warrant, the police arrest the man. He pleads guilty to both charges. The question is whether the man should be charged a \$50 arrest fee in both cases.

We believe the answer is probably yes because both the *capias* and the arrest warrant were processed. But a thought exists that charging two arrest fees when only one arrest was made is inappropriate. Accordingly, we seek your opinion on this matter.

#### **V. Levy of Court Costs for Commitment and Release**

Upon conviction, fees are to be assessed against the defendant for the services of peace officers in the case. *See* Tex, Crim. Proc. Code Ann. art. 102.011 (West Supp. 2012). One such fee is set out in Subsection (a)(6) as follows:

\$5 for commitment or release.

We seek your opinion as to the meaning of this language. Our office informally understands this language to mean that a \$5 fee should be assessed against a defendant for placing that person in jail (*i.e.*, commitment). We also understand the language to mean that a \$5 fee should be assessed if the defendant is released from jail prior to trial (*i.e.*, release).

We do not believe a \$5 release fee should be assessed if the defendant is not released from jail prior to trial (*e.g.*, the defendant cannot make bond). Nor do we believe a \$5 commitment fee should be assessed for "committing" the person to jail or prison at the conclusion of the case.

We seek your guidance on this issue.

Thank you for your time and attention to these questions concerning criminal court costs. We look forward to your opinion.

Sincerely,



David Slayton  
Administrative Director