



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

March 8, 1977

The Honorable Joe Resweber  
Harris County Attorney  
Harris County Courthouse  
Houston, Texas

Opinion No. H- 950

Re: Payment of remittance  
of a judgment of a bail  
bond forfeiture.

Dear Mr. Resweber:

You have requested our opinion concerning the proper payment of a judgment for remittance of moneys collected from the surety in a bail bond forfeiture. You have asked the following questions:

1. May the County Auditor legally approve a disbursement pursuant to the judgment?
2. From which fund should such disbursement be made?
3. Should the fees and/or commissions of the District Attorney and District Clerk, which were deducted from the forfeited bond, be adjusted on the basis of the net amount of forfeiture after remittance?

Section 12(a) of article 2372p-3, V.T.C.S., expressly provides for such judgments of remittance and was held constitutional in Robinson v. Hill, 507 S.W.2d 521 (Tex. 1974). Accordingly, it is clear that a claim based upon such a judgment is authorized by law and should be approved by the County Auditor. See also Attorney General Opinion O-1847 (1940).

Your next question concerns the fund from which the remittance should be paid. You note that article 1628, V.T.C.S., in effect provides that all "fines and forfeitures" shall be deposited in the Road and Bridge Fund. In addition, article 1007, Texas Code of Criminal Procedure, provides for the district attorney to receive ten per cent of all fines and forfeitures he recovers for the State or county, and for the district clerk to receive five per cent thereof. Of course, these officers are on a salary basis, article 3912e, section 19(d), V.T.C.S., and the fees collected are therefore deposited in the Officers' Salary Fund. V.T.C.S. art. 3912e, § 5.

In our view, the claim for remittance is a general obligation of the county and should be paid from the General Fund. V.T.C.S. arts. 1626, 1628. Of course, the Commissioners' Court is authorized to transfer funds from the Road and Bridge Fund to the General Fund. Tex. Const., art. 8, § 9; Attorney General Opinion H-194 (1974).

We see no purpose or authority for the removal of fees and/or commissions from the Officers' Salary Fund, for there is an annual interchange between the General Fund and the Officers' Salary Fund. If the Salary Fund is insufficient, it is required to be supplemented from the General Fund. V.T.C.S., art. 3912e, § 19(k). Furthermore, all moneys remaining in the Salary Fund at the end of each fiscal year are transferred to the General Fund. V.T.C.S. art. 3912e, § 19(m). These are the only transfers authorized with respect to the Officers' Salary Fund, and they would apparently make any further transfers purposeless. Accordingly, in our opinion, the fees and/or commissions of the district attorney and district clerk should not be adjusted to reflect the remittance of the fines and forfeitures from which those fees and/or commissions were deducted.

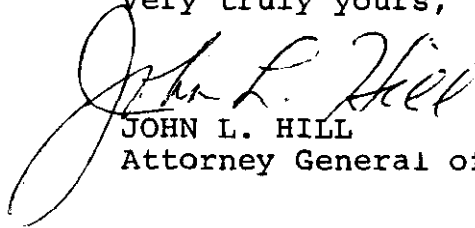
#### S U M M A R Y

A county auditor may legally approve a claim based upon a judgment for remittance of some or all of an amount recovered in a bail bond forfeiture. The claim should be paid from

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the General Fund and the contribution from  
the original forfeiture to the Officers'  
Salary Fund should not be utilized.

Very truly yours,



JOHN L. HILL  
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman  
Opinion Committee

jwb