



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

May 9, 1988

Honorable Dorothy Smith
Justice of the Peace 1-2
Cook County
Gainesville, Texas 76240

LO-88-51

Dear Ms. Smith:

You have asked whether the \$10 fee collected pursuant to article 6701h, section 1C(e), V.T.C.S., may be used to subsidize the salary of the clerk of a justice of the peace court. You should be aware that this office has a pending request, RQ-1427, about the constitutionality of the fee in question. We will address the issue of constitutionality in response to that request. This letter only addresses your question about the purposes for which the fee may be used if the fee is in fact constitutional.

Section 1C(e) provides:

The court shall require payment of a Ten Dollar (\$10) fee before dismissing proceedings under Subsection (a) of this section. The fee collected by a municipal court under this subsection shall be deposited in the municipal treasury. The fee collected by another court under this subsection shall be deposited in the county treasury of the county in which the court collecting the fee is located. Money deposited under this subsection may be used by the court that collected the money to defray expenses incurred in administering this section.

This office addressed a related question in Attorney General Opinion JM-313 (1985). The issue in JM-313 was whether the "bad check fund" under article 53.08 of the Code of Criminal Procedure (now article 102.007 of the Code of Criminal Procedure) could be used to defray costs

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related to the entire office or to defray only costs attributable to the prosecution and collection of bad checks. That statute provides that the fund be used "to defray the salaries and expenses of the prosecutor's office." Because nothing in that statute limits expenditures to costs of processing and collecting bad checks, this office concluded that the fund could be used to defray any expenses of the prosecutor's office.

Section 1C(e) of article 6701h, in contrast, limits use of the \$10 fee to expenditures "to defray expenses incurred in administering this section." Therefore, the fee may only be used to cover expenses actually incurred by a court in administering section 1C of article 6701h. It is for your office to determine, in the first instance, what office expenses are attributable to the administration of proceedings under section 1C.

You should also be aware that article III, section 53, of the Texas Constitution prohibits county and municipal authorities from granting extra compensation for work that has already been performed.

Very truly yours,


Sarah Woelk
Assistant Attorney General
Opinion Committee

SW/bc

cc: Charles Yett
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