



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 30, 1996

The Honorable Lee Haney
District Attorney
35th Judicial District of Texas
Courthouse
Brownwood, Texas 76801

Letter Opinion No. 96-108

Re: Whether a justice of the peace may require a person appealing a judgment of the justice court to pay the Local Government Code, section 118.121(2)(A) transcript fee in advance of rendering the service, and related questions (ID# 38732)

Dear Mr. Haney:

You ask, in essence, whether a justice of the peace may require a person appealing a judgment of the justice court to pay the fee for preparing and filing a transcript set forth in Local Government Code section 118.121(2)(A) in advance of rendering the service.

The fee set forth in section 118.121(2)(A) is clearly a fee for performing the justice of the peace duties set forth in rule 574 of the Texas Rules of Civil Procedure. Rules 571 through 573 provide that a party perfects an appeal from a justice court to a county court by filing an appeal bond or an affidavit of inability to pay the costs of appeal with the justice of the peace. "When the bond, or the affidavit in lieu thereof, provided for in the rules applicable to justice courts, has been filed and the previous requirements have been complied with, the appeal shall be held to be perfected." Tex. R. Civ. P. 573. Rule 574 provides that "[w]henever an appeal has been perfected from the justice court, the justice who made the order . . . shall immediately make out a true and correct copy of all the entries made on his docket in the cause, and certify thereto officially, and immediately send it . . . to the clerk of the county court"

As you point out, section 118.121(2)(A) of the Local Government Code provides that a justice of the peace is required to collect a fee of \$10.00 for preparing and filing a transcript. You suggest that "it would make more sense to require the fee to be collected prior to preparing the transcript because it would be more difficult to collect the fee after the transcript was prepared and sent to the county clerk." The duties described in rule 574 are clearly ministerial as opposed to discretionary,¹ but the rule is altogether silent with respect to the transcript fee. We conclude, however, that sections 118.121 and 118.123 of the Local Government Code do not permit a justice of the peace to collect the fee prior to rendering the service.

¹See *Advance Imports, Inc. v. Gibson Products Co.*, 533 S.W.2d 168, 170 (Tex. Civ. App.--Dallas 1976, no writ) (describing duty of justice of the peace to prepare and transmit transcript as ministerial).

Sections 118.121 and 118.123 provide in pertinent part:

§ 118.121. Fee Schedule

A justice of the peace shall collect the following fees *for services rendered* to any person:

...

(2) Services rendered after judgment (Sec. 118.123):

- (A) Transcript.....\$10.00
- (B) Abstract of judgment.....\$ 5.00
- (C) Execution, order of sale, writ of restitution, or other writ or process.....\$ 5.00 per page

Issuing other document (no return required).....copy charge.

§ 118.123. Fees After Entry of Judgment

(a) The fee for “Services rendered after judgment” under Section 118.121(2) applies to a civil matter in a justice court or small claims court.

(b) The fee for a “Transcript” under Section 118.121(2) is for making and certifying a transcript of the entries on a docket and, in the case of an appeal or certiorari, for filing the transcript with the original papers of the case in the proper court.

....

(e) The fee for “Issuing other document (no return required)” under Section 118.121(2) is for issuing a certificate, certified copy, notice, statement, or any other document a justice of the peace is authorized or required to issue on which a return is not to be recorded. The fee for each page or part of a page may not exceed the cost for copies designated by the State Purchasing and General Services Commission under Section 552.261, Government Code. *The fee must be paid at the time the order is placed.* [Emphasis added.]

As noted above, the fee set forth in subsection (A)(2) of section 118.121 is clearly a fee for the justice of the peace duties, transcript preparation and filing, described in rule 574. We conclude that a justice of the peace is not authorized to charge in advance for rendering this service on the basis of the foregoing statutory provisions. First, the introductory phrase of section 118.121 provides that “[a] justice of the peace shall collect the following fees for services rendered to any person.” It does not state that a justice of

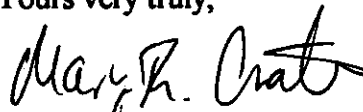
the peace shall collect these fees before rendering the services. The legislature could have provided, for example, that "a justice of the peace shall collect fees for services *to be* rendered to any person." In contrast, subsection (e) of section 118.123 expressly requires a justice of the peace to collect the fee for issuing other documents at the time the order is placed. This suggests that all the other fees set forth in section 118.121(2) are to be paid after services are rendered. Furthermore, in section 118.0545, the legislature has expressly provided that a fee charged by a county clerk for a service rendered after judgment in a county civil court action "is charged of the party requesting the service and is due at the time the service is requested." Local Gov't Code § 118.0545(d).² We believe that if the legislature had intended justices of the peace to collect the fee for transcript preparation and filing prior to rendering the service, it would have expressly provided that this fee is due at the time the service is requested, as it did in section 118.0545.³

You also ask if a justice of the peace must give notice of the required fee to the appealing party prior to rendering the service. Section 118.002 provides that a fee under chapter 118 is not payable "until a clerk or officer produces or is ready to produce a bill in writing containing the details of the fee to the person who owes the fee." No provision in chapter 118 of the Local Government Code requires a justice of the peace to give notice of a fee. A justice of the peace is not precluded from giving such notice, however.

S U M M A R Y

Sections 118.121(2)(A) and 118.123 of the Local Government Code do not permit a justice of the peace to collect a fee for preparing and filing a transcript prior to rendering the service.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

²See also Local Gov't Code § 118.023 ("A county clerk may not be compelled to file or record any instrument or writing authorized or required to be recorded until payment for all fees has been tendered. This provision does not apply to papers or instruments filed or recorded in suits pending in county court.").

³You ask how long a justice of the peace should wait for a fee and about the proper course of action in the event a fee is not paid. You state that a justice of the peace should not prepare a transcript until the fee is paid or an affidavit of indigency is filed and that the appealing party's appeal may be adversely affected as a result. For the reasons stated, a justice of the peace is not authorized to collect the fee before rendering the service.