



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 17, 1998

The Honorable Steven C. Hilbig
Bexar County Criminal District Attorney
Bexar County Justice Center
300 Dolorosa, Suite 5072
San Antonio, Texas 78205-3030

Letter Opinion No. 98-020

Re: Fee for filing and indexing a restitution lien
with county clerk under article 42.22 of the Code
of Criminal Procedure (ID# 39580)

Dear Mr. Hilbig:

You have asked our opinion as to whether the \$5.00 fee established in article 42.22, section 7(b) of the Code of Criminal Procedure is the exclusive fee to be charged by a county clerk for filing and indexing a restitution lien. You explain that a restitution lien filed with a county clerk extends to any interest of a defendant in real property located within the county where filed. Code Crim. Proc. art. 42.22, § 8(1). You question whether fees listed in section 118.011 of the Local Government Code that are to be collected by the county clerk when real property records are filed apply when a restitution lien is filed. Section 118.013 of the Local Government Code addresses the subject of real property records filing fees and reads as follows:

(a) The fee for "Real Property Records Filing" under Section 118.011 is for filing and recording, including indexing, in the real property records in the office of the county clerk a document that is authorized or required to be filed in those records.

....

(d) *The fee is in addition to any other specific fee provided for by other statute.*

Local Gov't Code § 118.013(a), (d) (emphasis added).

We now examine the process involved in filing a restitution lien. An affidavit to perfect a restitution lien may be filed only after a court has ordered restitution or entered a judgment requiring a defendant to pay a fine or costs of court. Code Crim. Proc. art. 42.22, § 4. The victim of a criminal offense or the state may file an affidavit to perfect a restitution lien with the secretary of state, the Department of Transportation, or the county clerk of the county in which the crime was committed or where the defendant resides, or where property owned by the defendant is located. *See id.* §§ 5, 7. The uniform fee for filing and indexing and for stamping a copy furnished by the state or victim to show the date and place of filing is \$5.00. *Id.* § 7(b). A restitution lien extends to any

interest of the defendant in real property whether then owned or after-acquired located in a county in which the lien is perfected by the filing of an affidavit with the county clerk. *See id.* § 8(1). When a restitution lien is filed, the county clerk is to immediately record it in the “*judgment records*” of the county. *See id.* § 7(d) (emphasis added). From our reading of section 7(d), we conclude that restitution liens are to be filed in the judgment records of the court rather than the real property records. A person filing a restitution lien with the county clerk, therefore, should not be charged real property records filing fees.

The \$5.00 fee charged for filing a restitution lien is not exclusive, however, because the county clerk is authorized by statute to charge a \$5.00 fee for “Records Management and Preservation.”¹ Local Gov’t Code § 118.011(b)(2). Section 118.0216 of the Local Government Code states, “The fee for ‘Records Management and Preservation’ under Section 118.011 is for the records management and preservation services performed by the county clerk after the *filing and recording of a document* in the records of the office of the clerk. The fee must be paid at the time of the filing of the document.” (Emphasis added.) Section 118.001 defines “document” in this chapter to include “any instrument, document, paper, or record.” *See id.* § 118.001. We conclude that a \$5.00 “Records Management and Preservation” fee would be assessed by a county clerk in addition to the \$5.00 fee for filing and indexing a restitution lien.

There is also a security fee assessed by a county clerk under section 291.008 of the Local Government Code. The collected security fees are used to fund increased security in courthouses. *See Code Crim. Proc. art. 102.017.* A commissioners court may set a security fee not to exceed \$5.00 to be collected at the time of filing in each civil case filed in a county court, county court at law, or district court. Local Gov’t Code § 291.008(a). A security fee is not mandatory, therefore, unless a commissioners court votes to assess it. If a commissioners court sets a security fee, the county and district clerks are required by statute to collect a \$1.00 fee for filing “*any document not subject to the security fee*” in subsection (a) of this section. *Id.* § 291.008(d) (emphasis added). *See Attorney General Opinion DM-283 (1994) at 10* (concluding county clerk must collect \$1.00 security fee in addition to other filing fees prescribed by law), *Attorney General Opinion DM-360 (1995) at 3-4* (concluding that state is not generally excepted by Local Gov’t Code § 154.004(b) from paying security fee). Fees other than the “Records Management and Preservation” fee and security fee may be applicable if a statute so prescribes.

¹As to questions regarding whether the state must pay the “Records Management and Preservation” fee, this office determined in Attorney General Opinion DM-360 that the state is not generally excepted by section 154.004(b) of the Local Government Code from paying fees set forth in section 118.011. Attorney General Opinion DM-360 (1995) at 3-4.

S U M M A R Y

The victim of a criminal offense or the state may file an affidavit to perfect a restitution lien with a county clerk of the county in which the crime was committed or where the defendant resides, or where property owned by the defendant is located. When a restitution lien is filed with a county clerk, the county clerk is to immediately record it in the judgment records of the county. Real property record's filing fees are not to be assessed when a victim or the state files a restitution lien.

The \$5.00 fee, established under article 42.22 of the Code of Criminal Procedure, for filing and indexing a restitution lien in a county clerk's office is not an exclusive fee. A "Records Management and Preservation" fee of \$5.00 is assessed by a county clerk for filing any document. If the county commissioners court has set a security fee, a \$1.00 security fee is assessed when a restitution lien is filed with the county clerk. Fees other than the "Records Management and Preservation" fee and security fee may be applicable if a statute so prescribes.

Yours very truly,



Rick Gilpin
Deputy Chief
Opinion Committee