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OPINION COMMITTEE

June 21, 2000

The Honorable John Cornyn
Attorney General, State of Texas
Office of Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

FILE # ML-41490-00

I.D. # 41490

RQ - 0251 - JC

Dear General Cornyn:

I am writing to again request your opinion on questions that relate to the salary supplement program for statutory county court at law judges that Section 51.702 of the Texas Government Code provides.

We previously requested an opinion from your office on two questions that related to this matter. You responded in Opinion No. JC-0196 issued on March 17, 2000, by answering one of the questions on whether a county that participates in the program could withdraw from the program in the middle of the program year. You indicated that a county could not do so legally. However, you did not answer the second question about whether the Comptroller could discontinue salary supplement payments to a county that stopped collection and remittance of fees in the middle of the program year. You stated that since the answer to the first question was that a county could not withdraw, no need existed to answer the second question.

Because of new developments in this matter, a need for an answer to the second of the previously posed questions has become more compelling. First, a brief history of this matter may again be helpful. This supplemental salary program for statutory county court at law judges is funded by the imposition of certain additional court costs and fees in participating counties. Participation in each program year (running from July 1 to June 30) is optional.

Dallas County joined the program in 1992 by passage of a resolution and submission of it to the Comptroller's Office, as required by the statute. Since 1995, such commissioners' court resolutions have been deemed "continuing" by law from one program year to the next. The necessity for submission of a new resolution by the annual June 1st deadline arises only if a county wishes to withdraw from participation in the program.

Letter to Attorney General John Cornyn
June 21, 2000
Page Two

The Dallas County Commissioners' Court adopted an order on October 5, 1999, to discontinue the assessment and collection of fees under Section 51.702 of the Code in that county, effective October 1, 1999. This action was taken in response to Attorney General Opinion No. JC-0098 and several recently filed lawsuits that concern the constitutionality of the court costs and fees. The Comptroller's Office did not become aware of the order until December 1999. We requested a formal opinion from your office on December 21, 1999. Then, as mentioned above, your response to our request was issued as Opinion No. JC-0196 on March 17, 2000.

Dallas County Assistant District Attorney John Dahill recently informed our office that Dallas County does not plan to resume collection of the court costs and fees under Section 51.702, despite the recent opinion that your office issued. He also indicated that, "it was anticipated by the Commissioners Court that Dallas County would not receive payments under Section 25.0015, Government Code, after October 1, 1999." Further, he told us that should the Comptroller remit such payments to Dallas County to comply with the express terms of Section 25.0015, Dallas County will return such payments to the Comptroller "without endorsement".

The statute fails to provide us with express guidance on how this type of situation should be handled from an accounting standpoint. In the absence of any statutory direction, we are again seeking advice from your office.

This issue impacts more than the question of Dallas County's allocation alone. It will affect the Comptroller's statutorily required balance of the judicial fund in September 2000. Under Section 25.0016, the Comptroller must determine whether the amount paid by the counties under Section 51.702 exceeds the amount paid to the counties under Section 25.0015. If the sums paid exceed the amounts paid out, the Comptroller is required to remit the excess to all of the participating counties on a proportionate basis, based on the total paid by each of them.

Unless this issue is resolved, the Comptroller's Office will be unable to determine the exact amount of excess funds that are available and thus subject to distribution to the counties at the end of the state fiscal year under Section 25.0016. This would cause the Comptroller to have to pay the other participating counties in two installments. One installment would be made in a timely fashion, while the balance of funds that are attributed to Dallas County's proportionate share would have to be delayed until this issue is somehow resolved.

Letter to Attorney General John Cornyn
June 21, 2000
Page Three

As you know, the State Auditor periodically audits the Comptroller for the administration of all state and local funds under this office's care. The Comptroller, the State Auditor, and all of the other participating counties want to ensure a sound basis for the required calculations that will determine the excess.

Since the statute is silent on what to do in this situation, and yet the handling of these funds is so important to this agency's statutory reconciliation of the judicial fund and possible distribution of any excess funds in September, we request your official opinion on the following three (3) related questions:

- 1.) **Must the Comptroller continue to remit the statutory county court at law judge supplemental salary funds under Section 51.702, Texas Government Code, to a county such as Dallas County that has discontinued collection of those funds in the middle of the program year?**
- 2.) **If the answer to the previous question is "no", may the Comptroller transfer Dallas County's allocation to the pool of funds that is available to the other counties that participate in this program?**
- 3.) **If the answer to the first question is "yes", and yet Dallas County refuses to accept payment and returns the funds to this office, may the Comptroller transfer Dallas County's allocation to the pool of funds that is available to the other counties that participate in the program?**

We greatly appreciate your assistance in this matter and look forward to a prompt response, so that this office can properly handle its statutory obligations to balance the judicial fund at the end of the state fiscal year.

Sincerely,



Richard Munisteri
General Counsel
Texas Comptroller of Public Accounts