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OPINION COMMITTEE

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Opinion Division
Attorney General of Texas
P O Box 12548
Austin, TX 78711-2548

RQ-DD92-6A

RE: Opinion Request - Retention of Death Certificate Fees by Justice of the Peace

Gentlemen:

The Coryell County Auditor has received a request from F. W. Price, Justice of the Peace, Precinct Two, Coryell County, Texas, for monies paid to the county for the issuance of death certificate copies. After receipt of this request I reviewed the pertinent statute, Section 154.005, Local Government Code, which stated that a Justice of the Peace "may" receive in addition to a salary, all fees for acting as Registrar for the Bureau of Vital Statistics. Apparently, this Justice of the Peace had recently become aware of his right to request these fees even though the statute was amended several years prior to the date of the request. The Commissioners Court of Coryell County now requests that you answer two questions pertaining to the request and that is the purpose of this letter.

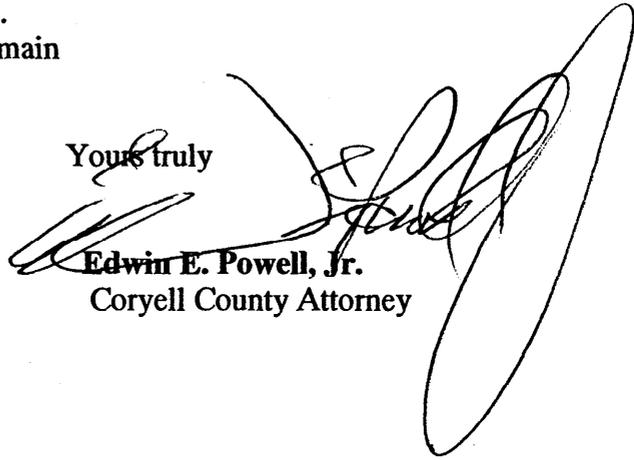
First, as the statute uses the language "may receive", it appears that the intent of the Legislature is to be permissive. Therefore, we request a clarification in this specific instance that the Justice waives any claims to any fees that might have accrued prior to the actual date of his letter which was June 19, 2003. The County stands ready and willing to pay these funds beginning with any fees accrued on or after June 19, 2003, but since no request was made for them and the County was not mandated to pay these fees by the statute, we feel it is only appropriate and proper that tax payer funds not be tendered to the requesting party for any dates prior to his initial request. Furthermore, as it has been well stated for numerous years, Justices were allowed to keep marriage fees collected by them and this Justice of the Peace did so. Since the Justice had not requested the Death Certificate issuance fees prior to June 19, it would appear that he had waived any right to them before that date.

The second question relates to the use of county facilities and equipment for the issuance and preparation of death certificates issued in the capacity of Registrar for the Bureau of Vital Statistics. These death certificates are prepared using county copiers, county purchased paper, secretarial time paid for by the county, and in facilities paid for by the tax payers including utilities, office space, etc. The specific statute makes no mention of reimbursement, however,

Section 191.022 of the Health and Safety Code specifically requires a local registrar to submit a portion of the fees collected for certified birth certificates to the Comptroller. Although it was not provided in our specific legislation it would seem that the legislative intent of the legislature would be to allow counties to retain a reasonable sum to reimburse them for the use of their facilities and equipment. Alternatively, could the county decide not to furnish such supplies and labor to the registrar therefore requiring that he perform his registrar duties at a site other than the county provided Justice of the Peace office.

Looking forward to your reply, I remain

Yours truly

A large, stylized handwritten signature in black ink, appearing to read 'Edwin E. Powell, Jr.', is written over the typed name and title.

Edwin E. Powell, Jr.
Coryell County Attorney

EDP/sl

Enclosure