



## GRIMES COUNTY AUDITOR

Sidney "Buck" LaQuey  
CPA

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**RECEIVED**

May 26, 2009

**MAY 27 2009**

**OPINION COMMITTEE**

FILE # M1-46068-09  
I.D. # 46068

The Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, TX 78711-2548

**RQ-0802-GA**

**Re: Request for Opinion Pursuant to Texas Code of Criminal Procedure §45.051 and Texas Parks and Wildlife Code §12.107**

Dear Attorney General Abbott:

On behalf of Grimes County, Texas and the Grimes County Attorney's Office, I respectfully request an opinion regarding the following question:

Is a local Government entity, namely a County, permitted to impose on a Defendant a special expense, without a fine, and to retain 100% of any special expense imposed, pursuant to Code of Criminal Procedure §45.051, for a violation of the Parks and Wildlife Code despite the provisions of §12.107 Parks and Wildlife Code which require 80-85% of a fine imposed to be remitted to the Department of Parks and Wildlife?

The question has arisen because a local Justice of the Peace has on occasion granted deferred adjudication to a defendant charged with a Parks and Wildlife Code violation. The deferred adjudication has been consistent with Code of Criminal Procedure §45.051. The Justice of the Peace has employed §45.051(c) and imposed a special expense not exceeding the amount of "the fine assessed." However, no fine has been assessed.

While it appears that the Justice of the Peace is authorized to charge the special expense and that such is to be disbursed to the local governmental entity<sup>1</sup>, a conflict seems to exist between §45.051(c) of the Code of Criminal Procedure and §12.107 Parks and Wildlife Code. That is, the legislative intent of §12.107 Parks and Wildlife Code seems to suggest that the Parks and Wildlife Department is to receive funding as a result of criminal cases attributable to violations of the Parks and Wildlife Code, which are often enforced by Parks and Wildlife Department employees. It would

<sup>1</sup>Tex. Att'y Gen. Op. No. JM-526 (1986)

appear that a Justice of the Peace can avoid the disbursement requirements of §12.107 by employing deferred adjudication pursuant to §45.051(c) and imposing a special expense rather than a fine. It is Grimes County's desire to appropriately apply these provisions to the disbursement of monies collected.

I would also point out that Code of Criminal Procedure §45.051(c)'s language of "not to exceed the amount of the fine assessed" seems to suggest that a fine should be imposed in addition to the special expense if deferred adjudication is granted. However, such a reading appears inconsistent with the premise of deferred adjudication, that being to avoid a conviction and the punishment attendant to such conviction, which, in this type of case, would be a fine. Accordingly, local authority has to this point interpreted such provisions to mean a special expense, not to exceed the amount of the fine that *could have been assessed*, can be imposed as part of deferred adjudication.

Thank you for your attention and assistance to this matter. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Sidney LaQuey", with a long horizontal flourish extending to the right.

Sidney LaQuey  
Grimes County Auditor

cc: Jon C. Fultz  
Grimes County Attorney  
via facsimile (936) 873-6457



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JUN 02 2009

OPINION COMMITTEE

FILE # MI-46068-09  
ID. # 46078

June 1, 2009

Attn: Intergovernmental Relations  
The Honorable Greg Abbott  
Attorney General of Texas  
P.O. Box 12548  
Austin, TX 78711-2548

*Re: Request for Opinion Pursuant to Texas Government Code §402.042*

Dear General Abbott:

I have requested an answer to the question: If a ticket, which calls for a fine, is written by the Texas Department of Parks and Wildlife in Grimes County's Justice of the Peace Precinct #1, can the JP in that precinct allow the defendant deferred adjudication? The State is not entitled to the 80-85% share in deferred adjudication. All the money would go to the County.

I have asked the District Attorney, and the County Attorney this question and they said the law is grey in this area and recommended that I ask your opinion.

Respectfully,

A handwritten signature in black ink, appearing to read "Buck LaQuey", with a long horizontal flourish extending to the right.

Sidney "Buck" LaQuey