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OFFICE OF COURT ADMINISTRATION

DAVID SLAYTON
Administrative Director

December 3, 2012

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The Honorable Greg Abbott
Attorney General of Texas
Box 12548
Austin, Texas 78711-2548

RQ-1101-GA

RE: Questions regarding the County Scofflaw Statute, Texas Transportation Code, § 502.010.

Dear General Abbott:

The Office of Court Administration (OCA) operates the Collection Improvement Program (CIP). The purpose of the program is to assist cities and counties in collecting fines and court costs assessed against persons convicted of crimes. The program promotes the use of certain legal remedies that create incentives for defendants to pay their court-ordered fines and court costs. Such incentives are useful because many defendants do not make payments of their own volition.

One productive legal remedy is the county scofflaw statute. The law is codified as Section 502.010 of the Transportation Code.¹ The statute authorizes the county tax assessor-collector to refuse to register the motor vehicle of a person whose fines and costs are past due.² Faced with the prospect of being unable to register a motor vehicle, a defendant will often choose to make the court-ordered payments.

¹ Prior to January 1, 2012, the statute was denominated Section 502.185. The heading of the section was "Refusal to Register Vehicle in Certain Counties." The 82nd Legislature renumbered the statute as Section 502.010 effective January 1, 2012. Act of May 29, 2011, 82nd Leg., R.S., ch. 1296, § 76, 2011 Tex. Sess. Law Serv. 3619, 3651 (West) (to be codified at Tex. Transp. Code § 502.010). The heading was changed to "County Scofflaw." *Id.* In this opinion request, we will refer to the statute number as Section 502.010 and to the section heading as "County Scofflaw."

² Additionally, registration can be refused if the person has failed to appear in a criminal case in the county. Registration can also be refused if a person owes a tax to the county. A person who owes a past-due tax is not necessarily a criminal defendant. However, in this opinion request, the term "defendant" will include persons who owe county taxes.

As mentioned above, the tax assessor-collector may refuse to allow a person to register a motor vehicle. The statute also authorizes the Texas Department of Motor Vehicles (DMV) to do so. However, the DMV is involved only if the county has contractually agreed to provide the DMV with information regarding the defendant. The information provided to the DMV would include reports of a defendant's past due fines, court costs and taxes. The information would also include reports of any instances in which the defendant failed to appear in a criminal case in the county.

Counties that have a contract with the DMV may impose an additional fee on the defendant. The particular portion of Section 502.010 authorizing the additional fee is Subsection (f). Prior to the 82nd Legislative Session, Subsection (f) read as set out below:

A county that has a contract under Subsection (b) may impose an additional fee to a person paying a fine, fee, or tax to the county after it is past due.

Significantly, Subsection (g) defines a "past due" amount as one that is "unpaid 90 or more days after the date it is due."

The 82nd Legislature amended Subsection (f) – twice! The first bill to amend the statute was Senate Bill 1386 which passed on May 25, 2011. The bill changed the wording to read as follows:

A county that has a contract under Subsection (b) may impose an additional fee of \$20 to

- (1) a person who fails to pay a fine, fee, or tax to the county by the date on which the fine, fee, or tax is due; or
- (2) a person who fails to appear in connection with a complaint, citation, information, or indictment in a court in the county in which a criminal proceeding is pending against the owner.

The second bill to amend the statute was House Bill 2357, Section 76 which passed on May 29, 2012. The wording of Subsection (f) as amended by this bill is similar to the prior law:

A county that has a contract under Subsection (b) may impose an additional fee to a person paying a fine, fee, or tax to the county after it is past due. The additional fee may be used only to reimburse the department or the county for its expenses for providing services under the contract.

Subsection (g) was not amended by either bill.

In light of these statutory amendments and in light of other unclear parts of the statute, we seek your opinion on the following seven questions. Some of the questions have multiple parts. Our questions are as follows:

- (1) Is the amount of the additional fee \$20.00 (*see* SB 1386) or is the amount of the fee unspecified (*see* HB 2357)?
- (2) When may an additional fee be assessed for non-payment of a fine, fee, or tax? SB 1386 permits an additional fee assessment when a person fails to pay "by the date on which the fine, fee, or tax is due." HB 2357 authorizes imposition of an additional fee after a fine, fee, or tax is "past due." (As noted earlier, Subsection (g) defines a "past due" amount as one that is "unpaid 90 or more days after the date it is due.")
- (3) Who decides whether a county will impose an additional fee? Our belief is that the Legislature intended for the commissioners court to make this decision. However, the tax assessor-collector and individual judges are other possibilities.)
- (4) Assuming that the amount of the fee is unspecified, who decides the amount of the additional fee? Again, our belief is that the Legislature intended for this to be a commissioners court decision.
- (5) Who assesses and collects the additional fee? When a criminal defendant fails to pay a fine or fee, should the fee be assessed by the court in which the defendant was convicted? Alternatively, should the fee be assessed and collected by the tax assessor-collector?
- (6) Does the officer charged with assessing and collecting the additional fee have any discretion to waive imposition of the additional fee?
- (7) Can an additional fee be assessed if a defendant fails to appear for a criminal proceeding but has not been convicted? SB 1386 seems to answer the question affirmatively (fee may be imposed on person who fails to appear). HB 2357, on the other hand, appears to answer the question negatively. HB 2357 states that an additional fee may be imposed upon a person paying a fine or fee after it is past due. A person who has failed to appear but has not been convicted does not yet owe any amount to the county. An "additional" fee can hardly be owed if no fee is owed in the first place.

Thank you for your consideration of the foregoing questions. We look forward to your response. If you have any questions, please feel free to contact me at (512) 463-1625.

Sincerely,



David Slayton
Administrative Director