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OPINION COMMITTEE



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I.D. # 47393

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September 12, 2013

Honorable Greg Abbott
Attorney General of Texas
Attention: Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

(CMRRR# 7005 2570 0001 4320 3155)

RE: Should Texas district court clerks begin collecting the new fees for electronic filing imposed by House Bill 2302 on September 1, 2013 or does the enactment of Senate Bill 390 work to control the collection of all new court costs and fees by postponing the collection date for those costs and fees until January 1, 2014 in accordance with the Legislature's expressed intent?

Dear Attorney General Abbott:

On behalf of the Bexar County District Clerk and pursuant to Tex. Gov't Code §402.043, I am requesting an opinion concerning the implementation and interpretation of House Bill 2302 and Senate Bill 390, both passed by the 83rd Legislature, Regular Session.

BACKGROUND

By its December 11, 2012 Order, the Texas Supreme made e-filing mandatory, though the deadlines imposed by the order are staggered per county population. For Texas counties with a population greater than 500,000, e-filing must begin by January 1, 2014.

House Bill 2302, enacted by the Legislature during the 83rd Regular Session, relates to the electronic filing system established by the Texas Supreme Court.¹ In addition to other components of a state-wide electronic filing system, House Bill 2302 amends Chapter 51 of the Texas Government Code to require each clerk of a Texas court to collect a \$20 fee on the filing

¹ Act of May 17, 2013, 83rd Leg., R.S., ch. 1290 (HB 2302), § 2, effective September 1, 2013.

of any civil action or proceeding requiring a filing fee, including an appeal and certain other filings. In relevant part, House Bill 2302 also suspends the application of Section 51.607 of the Texas Government Code² in an attempt to except House Bill 2302 from a mandatory January 1 collection date:

“Section 21. (a) Section 51.607, Government Code, does not apply to the imposition of a fee assessed under:

(1) Section 51.851, Government Code, as added by this Act”

House Bill 2302 was signed in each the House and Senate on May 17, 2013 and was signed by the Governor on June 14, 2013 with an effective date of September 1, 2013.

After House Bill 2302 was enacted, the Legislature then passed Senate Bill 390 which amends Section 51.607 of the Texas Government Code by repealing an exception to the application of the mandatory January 1 collection date set out in Section 51.607.³ The stated intent of the Legislature in passing Senate Bill 390 was to avoid the confusion caused by charging different court costs and fees at different times of the year by ensuring that collection of all new court costs and fees would thereafter be consistent and begin on January 1. Senate Bill 390 was signed in each the House and Senate on May 21, 2013 and signed by the Governor on June 14, 2013 with an immediate effective date of June 14, 2013.

Pursuant to the Texas Comptroller of Public Accounts’ statutory duty⁴ and under the heading “*Public Notice of Court Costs and Fees-2013*,” the Comptroller then published a list of all the new court cost or fee enacted during the 83rd legislative session in the Texas Register:

“Government Code, §51.607, requires the comptroller to publish a list of all court costs and fees imposed or changed during the most recent regular session of the legislature. ***This section also provides that, notwithstanding the effective date of the law imposing or changing the amount of a court cost or fee, the change does not take effect until January 1.*** The listing of court costs and fees to be identified and published as required by Government Code, §51.607 are as follows:

...

House Bill 2302

Electronic or Digital Court Documents and Electronic Filing System

² See TEX. GOV’T CODE 51.607(c) (2013): “Notwithstanding the effective date of the law imposing or changing the amount of a court cost or fee included on the list, the imposition or change in the amount of the court cost or fee does not take effect until the next January 1 after the law takes effect.”

³ See Act of June 14, 2013, 83rd Leg., R.S., ch. 417 (SB 390), § 1, effective June 14, 2013.

⁴ TEX. GOV’T CODE 51.607(b) (2013): “The comptroller shall prepare a list of each court cost or fee covered by Subsection (a) to be imposed or changed and shall publish the list in the Texas Register not later than August 1 after the end of the regular session of the legislature at which the law imposing or changing the amount of the cost or fee was enacted. The comptroller shall include with the list a statement describing the operation of this section and *stating the date the imposition or change in the amount of the court cost or fee will take effect under Subsection (c).*” (Emphasis added.).

Effective September 1, 2013. House Bill 2302 relates to signing electronic or digital court documents, to the electronic filing system established by the Texas Supreme Court, to the statewide electronic filing system fund, to certain court fees by taxing units; imposing and authorizing certain fees...”

38 Tex. Reg. 4769, 4771 (2013). (Emphasis added.).

The public notice provided by the Texas Comptroller in the Texas Register clearly states that collection of the new \$20 electronic filing fee should begin on January 1, 2014, a statement which contradicts the position taken by the Office of Court Administration that collection should begin on September 1, 2013 (See Attachment “A” Email from Assistant General Counsel, Office of Court Administration). Accordingly, the Bexar County Criminal District Attorney, on behalf of the Bexar County District Clerk, submits this opinion request to the Attorney General in order to formally resolve this matter.⁵

DISCUSSION

Assuming the public notice provided by the Texas Comptroller and published in the Texas Register is incorrect, there seems to be a conflict between House Bill 2302 and the legislatively expressed purpose of enacting Senate Bill 390. The Legislature’s intent in passing Senate Bill 390 was to avoid confusion by making the collection of all new court costs and fees consistent – collection of all new court costs and fees would now begin on January 1 *without exception*. On the other hand, proponents of a September 1 collection date argue that regardless of the intent behind Senate Bill 390 and despite the Texas Comptroller’s publication of January 1 as the date of collection, House Bill 2302 excepted the new \$20 e-file fee from the mandatory January 1 collection date.

QUESTION PRESENTED

Should Texas district court clerks begin collecting the new fees for electronic filing imposed by House Bill 2302 on September 1, 2013 or does the enactment of Senate Bill 390 work to control the collection of all new court costs and fees by postponing the collection date for those costs and fees until January 1, 2014 in accordance with the Legislature’s expressed intent?

Thank you for your prompt attention to this matter. If you have any questions, please do not hesitate to contact me.

⁵ The Bexar County District Clerk will begin collection of the new filing fee but escrow those funds until the Attorney General issues its opinion.

Respectfully submitted,

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