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The Texas Advisory Commission on Intergovernmental Relations is a state agency created by the Texas legislature to improve coordination and cooperation among all levels of government in Texas by providing continuing research, information, and advisory services to public officials and citizens of the state. The Commission is composed of representatives of state government, federal government, cities, counties, special districts, school districts and the general public.

Austin, Texas
August 1979

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FOREWORD

Like other local governments in Texas today, county governments are keenly aware of their citizens' high interest in restraining public spending and taxes. In responding to this interest, counties find their ability to act limited in several ways. Counties have fragmented and restricted authority over their financial affairs. They carry out numerous functions and activities that are established and basically controlled by the state, and they include a large number of offices with independent foundations in state law. Consequently, counties often need the cooperation and assistance of the state to finance their operations at the least possible cost to county taxpayers.

An important area where counties need an effective state partnership is in the use of service fees. The great benefit of service fees is obvious. With them, counties can charge users of county services for service costs and keep county taxes low.

This report highlights several county service fee issues and also discusses the need for a comprehensive study of "fees of office," the major source of county fee revenue. The report was authorized by the Commission for the purpose of contributing to the improved use of service fees by county governments in the state. The Commission approved the report at its meeting on May 11, 1979 for publication as an informational report incorporating final action by the 66th Legislature on legislation discussed in it.

In addition to this report, the Commission has prepared two other publications on the subject of county fees. *A History of Statutory Changes in Texas County Fees* is a basic reference to many of the fees currently charged by counties. A brief report, *The Use of Fees in Judicial and Legal Records Administration: A Survey of Selected States*, describes the approaches of several states other than Texas in establishing and revising court-related fees and fees charged in the administration of legal records. It also covers state-local relationships in financing these activities. N. David Spurgin, Senior Research Associate on the Commission's staff, and Olive Forbes, formerly a Commission staff member and now head librarian at the Lyndon B. Johnson School of Public Affairs, prepared these reports for the Commission.

Austin, Texas
August 1979

Jack A. Griesenbeck
Chairman

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I

INTRODUCTION

The growth of government spending and tax revenues in recent years has led to a greater awareness of the importance of fees in financing public services. Fees may be used to place the cost of government services more directly upon the users and beneficiaries of those services. Fees can act as a regulator that helps keep government services within limits of practical need and may also contribute to operational efficiency by placing restraint on spending for the services for which a charge is imposed. Not every fee has identical advantages, of course, and not every government activity can or should bear a charge. The proper use of this means of financing, however, can help to hold down government costs and taxes.

County governments in Texas currently rely upon a large number of fees in financing their operations. For example, counties charge for:

- recording a legal document in the county clerk's office,
- filing a civil case in county or district court,
- issuing a certificate of title to a motor vehicle,
- serving a witness with a subpoena to appear in court,
- issuing a permit for development in a floodplain,
- conducting the sale of property to satisfy a court judgment,
- issuing a copy of a court record,
- accepting a load of rubbish for disposal,
- issuing a permit for installation of a septic tank, and
- constructing terraces or building a waterway for a landowner.

In 1976-1977, the latest year statewide data are available, fully 29 percent of county revenue came from charges and miscellaneous revenues. In recent years, this source of county revenue has increased faster than county property taxes or any other source of county revenue, excluding federal aid.

Table 1

SOURCES OF COUNTY REVENUE, 1976-1977
(Dollars in Millions)

<u>Source</u>	<u>Amount</u>	<u>Percent</u>
Property Taxes	\$ 531.4	49%
Other Taxes	55.7	5
Charges & Misc.	320.5	29
State Aid	62.5	6
Federal Aid	107.1	10
All Other	<u>7.6</u>	<u>1</u>
TOTAL	\$1,084.8	100%

SOURCE: US Department of Commerce, Bureau of the Census, *Governmental Finances in 1976-1977* (GF77-5), table 24, November 1978.

Several specific areas of county operations where authority to utilize service fees has not been granted--or generally granted--to counties in the past are discussed in this report. Also, policy issues relating to existing court reporters' fees and the broad spectrum of "fees of office" are identified. The 66th Legislature passed at least three measures and considered others related to almost all these matters. This legislation is noted herein.

II

NEW OR EXPANDED FEE AUTHORITY

PROSECUTION OF "HOT CHECK" CASES

Two statutes define the criminal activity often referred to as "passing a hot check." The lesser offense, which is a Class C misdemeanor punishable only by a fine of less than \$200, is known as "issuance of a bad check."¹ If a person knowingly writes a check for which insufficient funds to make payment are on deposit or draws on a non-existent bank account and fails to pay the full amount of the check to the holder within 10 days after receiving written notice, he may be prosecuted. The broad scope of this section makes it apply to cases where the bad check is issued in payment of a preexisting debt. The more serious offense of theft by check² may be prosecuted to include the lesser offense as an additional charge.

Theft by check carries in most cases a more stringent penalty, and conviction becomes a bar to entry, advancement, or employment in many professions and occupations. If a worthless check is written or passed in order to obtain property³ or to avoid paying for service,⁴ the issuer of the check may be prosecuted for theft by check. The presumption of criminal intent is based on the person's knowledge that he had (1) no account on which to draw or (2) an account containing insufficient funds. Provisions for sending certified notice and allowing 10 days for making full payment after receipt of notice also apply to this offense. Punishment provisions for theft by check depend on the value of the property or service stolen.

In addition to voluntary restitutions, county and district attorneys' offices throughout the state spend considerable time and money in collection activities. Many restitutions secured by these offices are made before a case is prepared and filed, and most "hot check" cases never go to court. The work involved in making these collections, however, has had to be financed out of general county funds because no collection fee has been authorized under state law. Also, cases that

¹Tex. Penal Code Ann. sec. 32.41.

²Tex. Penal Code Ann. sec. 31.06.

³Tex. Penal Code Ann. sec. 31.03.

⁴Tex. Penal Code Ann. sec. 31.04.

are filed are usually dismissed when restitution is made. This practice avoids the stigma of a judgment of guilty against the defendant, but it also permits him to avoid paying any of the public costs for handling the case against him.

New Fee Law Adopted

House Bill 825, passed by the 66th Legislature, permits the county attorney, district attorney, or criminal district attorney to collect a fee from any party to the offense "if his office collects and processes a check or similar sight order." It does not contain a specific provision making fees applicable to cases which are filed in county or district court and then dismissed after restitution but is thought to apply in these situations. It establishes a schedule of fees based upon the face amount of the check or sight order. Revenues from these fees are dedicated to financing the collection operations of the office of the county, district, or criminal district attorney and may be spent only at the discretion of the attorney.

ADMINISTRATION OF CHILD SUPPORT PAYMENTS

The receipt, recording, and disbursement of child support payments made under court order is an important function of the domestic relations division, family court services division, or other office of the juvenile board in many counties. In other counties, this function is administered by the district clerk. Handling child support payments through the registry of the court creates a permanent record that can be used in any legal action and presumably also promotes compliance with the court order. This record benefits both the payor and the payee.

Child support payments are made weekly or monthly and, depending upon the age of the child or children involved, may continue for many years in any specific case. In large counties, thousands of payments are handled each month. Most counties are not permitted under present law to charge any fee for this service, but a few--Harris, Wichita, Brazoria, Fort Bend, Matagorda, and Wharton--are authorized by the statute that creates their county juvenile boards to assess a fee of \$1 per month collectible annually in advance.⁵

Legislation Introduced

As introduced in the 66th Legislature, House Bill 1263 would have allowed the commissioners court of any county with more than 350,000 population (according to the last preceding federal census) to assess a service fee of up to \$3 per month for handling child support payments. The amount of the fee would have been recommended to the commissioners court by the

⁵Tex. Rev. Civ. Stat. Ann. arts. 5139VV, 5142a--2, and 5142c--1.

juvenile board, based upon the costs of the child support office. Fee revenues would have been placed in a separate account to be used only for support of the office administering child support payments. This fee could have been levied in addition to or in lieu of the one-time \$3 fee already required to be assessed in all divorce cases in a district court with jurisdiction in a county of more than 350,000 population.⁶

Policy Considerations

A more generally applicable method for offsetting some of the costs of administration of child support payments may need to be written into state law. The basic concept of a monthly service fee embodied in existing statutes for a few counties would have been extended to a very limited number of additional counties by HB 1263. In addition, this bill would have permitted the commissioners court in affected counties to set the exact fee (up to the \$3 maximum) upon the recommendation of the juvenile board. If this same approach were made applicable to all counties with juvenile boards, the great majority of child support cases in the state probably would be included. Most rural counties do not have juvenile boards and child support payments are handled by the district clerk's office; however, these counties perhaps also ought to be authorized to charge a fee.

SUBDIVISION REGULATION

County governments are able to exercise some control over subdivision development or building construction in unincorporated areas under two aspects of present state law. The more recent authority given to counties⁷ permits them to adopt and enforce regulations pursuant to the National Flood Insurance Act of 1968. These regulations pertain both to buildings and to utilities and similar infrastructure in identified flood-hazard areas. Counties are authorized to charge fees in connection with the administration of these regulations--for example, for the issuance of permits and the inspection of construction.

County governments also have authority to establish standards for streets and roads, including drainage. These standards are applicable to subdivisions and certain other divisions of land outside the corporate limits of cities. The authority for counties with populations less than 190,000 (according to the last preceding federal census)⁸ is found in a statute separate from the authority for other counties.⁹ Counties have no authority to impose any fee in conjunction with the administration of these regulations.

⁶Tex. Rev. Civ. Stat. Ann. art. 5142a--1.

⁷Tex. Rev. Civ. Stat. Ann. arts. 8280--13 and 1581e--1.

⁸Tex. Rev. Civ. Stat. Ann. art. 6626a.

⁹Tex. Rev. Civ. Stat. Ann. art. 2372k.

To assure that the construction of streets and roads meets county standards, state law provides counties with the authority to require a performance bond of the landowner. The amount of this bond was limited to \$3 per lineal foot of road or street under legislation passed in the 1950s. Most of the streets and roads constructed in unincorporated areas, unless annexed into a city, probably must sooner or later be maintained by the county. If the original construction is not proper, county maintenance costs will be greater, flooding may occur, and, in some cases, reconstruction by the county may be required.

Amendment Adopted

House Bill 283, as passed by the 66th Legislature, amended the law applicable to counties with less than 190,000 population by removing the \$3 per lineal foot limitation on the amount of performance bonds and permitting the commissioners court to set the bond at any amount it considers appropriate not exceeding the estimated cost of construction of the streets or roads. HB 283 does not affect the provisions of the law applicable to larger counties.

Policy Considerations

In addition to the amendment to article 6626a made by House Bill 283, a similar amendment to article 2372k seems to be equally needed. Also, both statutes probably should be changed to give commissioners courts authority to establish reasonable fees in connection with administration of their standards--such as review and acceptance of plats for filing, approval of work in progress, and final inspection of completed streets and roads.

USE OF COUNTY PARKS

County governments (and cities, towns, and villages) have authority under present law to operate and maintain parks and to levy property taxes to acquire, improve, or operate parks.¹⁰ Counties with 70,000 or more population (according to the last preceding federal census) are empowered by a 1957 act¹¹ to issue revenue bonds for the purposes of purchasing, improving, or equipping parks and developing park facilities. The county may appoint a board of park commissioners to exercise the county's authority for financing and operating any park covered by the act. If revenue bonds are issued, the county is required to impose "fees, charges, and tolls for the use of such properties and facilities."¹² The revenue produced by these levies must be sufficient to pay all operation and

¹⁰Tex. Rev. Civ. Stat. Ann. art. 6081f.

¹¹Tex. Rev. Civ. Stat. Ann. art. 6079e.

¹²ibid.

maintenance expenses of the park and retire the bonds issued to finance park development. A similar statute enacted in 1949 applies specifically to Gulf Coast counties that develop county parks on coastal islands.¹³

While counties have been given general authority to levy property taxes for park purposes, their power to assess fees or charges for park use is limited to parks developed with the use of revenue bonds. The state attorney general has ruled, in addition, that counties have no authority to levy and collect any fees for park use after these bonds have been retired.¹⁴

Amendment Adopted

House Bill 1293, as passed by the 66th Legislature amended article 6079e, Tex. Rev. Civ. Stat. Ann., and made it applicable to any county with a population of 5,000 or more according to the last preceding federal census. The bill made no other change in the law.

Policy Considerations

Permissive authority for commissioners courts to impose fees for the use of any park owned or operated by the county appears to be needed in order to place at least part of the burden of park expenses on those persons who directly enjoy the benefits of the park. In some cases, park users are residents of other counties who, in the absence of a user fee, make no financial contribution to park operation or upkeep.

Fee schedules probably should be based on costs exclusive of capital construction, and authority for charging separate fees for admission and for use of major facilities, such as campsites, shelters, and swimming areas, would appear appropriate. Persons 65 years of age and older are exempt from fees charged for state park use, and counties might be given the option to grant a similar exemption. The expenditure of all revenues from these fees probably should be limited to park purposes.

In the event a county has established a board of park commissioners to operate any county park, the board could be given authority to establish the user fees for that park, subject to approval of the commissioners court.

¹³Tex. Rev. Civ. Stat. Ann. art. 6079c.

¹⁴Tex. Att'y Gen. Op. No. H-1302 (1978).

III

COURT REPORTERS

Each judge of a court of record (which excludes justice courts and most municipal courts) is required by Texas law to appoint an official shorthand reporter.¹⁵ The official reporter must attend all sessions of the court, take full shorthand notes of all oral proceedings, and preserve these notes for three years.¹⁶ Since 1977, certification by the Texas Supreme Court has been mandatory before a person may be appointed an official court reporter or deputy reporter or "engage in . . . shorthand reporting for use in litigation in the courts of this state . . ."¹⁷

The judge of each district court sets the salary and working conditions for the official reporter in his court.¹⁸ Annual salary increases in excess of 10 percent are subject to the approval of the county commissioners court. A January 1977 survey of the official district court reporters by the Texas Judicial Council revealed a salary range from \$9,600 to \$25,000, with a median of \$15,612.¹⁹

Apparently, judges of many county courts set the salary of official county court reporters. The general statute authorizing the commissioners court to set county employees' and officials' salaries, however, specifically excludes only official district court reporters.

In multicounty district courts, official court reporters are paid per diem and mileage when attending sessions held outside the county of their residence. Each county pays those expenses which are incidental to its own court terms, and limitations on actual expenses allowed under this system are set by state statute.²⁰ If the official reporters for the district are unavailable and a visiting court reporter from another district is obtained, the per diem allowed is doubled.²¹

In addition to salary, and per diem where applicable, court reporters are specifically permitted by law to retain all fees charged to any person

¹⁵Tex. Rev. Civ. Stat. Ann. art. 2321.

¹⁶Tex. Rev. Civ. Stat. Ann. art. 2324.

¹⁷Tex. Rev. Civ. Stat. Ann. art. 2346b, sec. 1.

¹⁸Tex. Rev. Civ. Stat. Ann. art. 3912k, secs. 3(a) and (b).

¹⁹Texas Judicial Council, "Court Reporter Survey," January 1977, unpublished survey, p. 2.

²⁰Tex. Rev. Civ. Stat. Ann. art. 2326a.

²¹Tex. Rev. Civ. Stat. Ann. art. 2326a--1.

or entity requesting a transcription of the reporter's notes of official proceedings.²² Current practice among reporters seems to be to establish an individual fee schedule in conference with the trial judge. This schedule fixes regular per page charges covering the preparation of transcripts (criminal proceedings) or statements of fact (civil proceedings). Charges include the original and one copy and may vary with the technicality of material to be transcribed. Reporters tend to assess higher fees for expert or medical testimony and for oral arguments; a few increase charges for the pretrial examination of prospective jurors (voir dire). Separate charges are allowed by law for indexing the transcript, reproduction of exhibits, binding, and postage. If a transcript is ordered to be available immediately after the conclusion of each day's session (daily copy), the charge increases substantially. The current statute authorizes the reporter to charge a reasonable amount for the original and one copy of any transcription and to sell additional copies at a per page fee not in excess of one-third of the original cost per page. According to 89 of the 156 court reporters responding to a survey by the Texas Judicial Council in 1977, the customary charge per page for oral testimony was \$2 or more. Higher rates were reported for all other transcriptions. If there is an objection to a court reporter's fees in connection with a pending case, the trial judge must decide what amount is a reasonable fee.²³

In 1977 the Corpus Christi Court of Civil Appeals declared unconstitutional provisions of article 2324 allowing the judge to approve fees charged by the court reporter where there was no objection and to determine the reasonable amount of the fee when contested. The ruling stated that the prior law of 30 cents per 100 words of transcript remained in effect, plus charges for postage, reproduction, and other actual expenses.²⁴ The Supreme Court has declined further review on other grounds²⁵ and has not yet exercised its own authority to set court reporters' fees in civil cases through rule making.²⁶ This case has apparently had little impact statewide in view of the Supreme Court's decision not to review it.

The court reporter's fee is paid from county funds when an indigent defendant files a criminal appeal.²⁷ In civil appeals by an indigent plaintiff, the court reporter receives no fee for transcribing the narrative statement of facts.²⁸ The fees charged for transcript copies that are not filed in a case do not appear to be subject to any approval procedure.

Generally, court reporters must pay their own operating expenses. Reporters surveyed in 1977, however, indicated that counties supplied 137 with telephones, 130 with office furniture, 108 with office supplies, 90 with typewriters, and 70 with stenographic paper.

²²Tex. Rev. Civ. Stat. Ann. art. 3912k, sec. 5.

²³Tex. Rev. Civ. Stat. Ann. art. 2324.

²⁴Johnson v. City of Ingleside, 554 S.W.2d 775.

²⁵In re Johnson, 569 S.W.2d 882, writ ref'd n.r.e.

²⁶Tex. Rev. Civ. Stat. Ann. art. 2324 and Tex. R. Civ. P. 377(f), 9th ed.

²⁷Tex. Code Crim. Pro. Ann. art. 40.09.

²⁸Tex. R. Civ. P. 380, 9th ed.

LEGISLATION INTRODUCED

Several bills introduced in the 66th Legislature would have altered existing law relating to court reporters' salaries, per diem, or transcript fees. None of these bills were passed.

House Bill 368 would have amended section 5 of article 40.09 of the Code of Criminal Procedure to require that an indigent's request for transcription of jury selection proceedings show the necessity of the transcript to prove a point of error.

House Bill 1090 would have given to the commissioners court of any county with 1,200,000 or more population according to the last preceding federal census (Harris and Dallas counties) the power to set court reporters' salaries.

House Bill 1091 would have amended section 5 of article 40.09 of the Code of Criminal Procedure to allow the commissioners court to set the per page rate paid by the county for indigents' transcripts in criminal cases.

House Bill 1092 would have provided that if a deputy replacement is appointed during the absence of an official court reporter because of illness, press of official work, or unavoidable disability, the official reporter's salary will not be paid.

House Bill 1395 would have raised from \$1,400 to \$2,000 per year the total allowable per diem and travel for the official district court reporter in districts containing four counties.

House Bill 2095 would have amended article 3912k of the Revised Civil Statutes to permit the state to reimburse all or a portion of the district court reporters' salaries to each county salary fund.

Senate Bill 223 would have amended article 3912k of the Revised Civil Statutes to prohibit payment by the county of any additional compensation (fee) to official court reporters for transcripts for indigents but to allow a county to pay the reporter's necessary expenses incurred in the preparation of transcripts or statements of fact.

QUESTIONS AND ALTERNATIVES

In 1976 the American Bar Association (ABA) issued a standard for court reporting which includes the following major elements.

- "Court reporters should be responsible to the court rather than to individual judges."²⁹

²⁹American Bar Association, Commission on Standards of Judicial Administration, *Standards Relating to Trial Courts* (American Bar Association, 1976), p. 67.

- Reporters should be guaranteed professional independence in regard to accuracy of their transcriptions.
- The court should have ownership and control of the record of court proceedings.
- Qualifications, appointment, and terms of employment should be governed by statewide policy.
- Various provisions should govern centralized court administrative supervision, especially regulation of compensation and "commitment of time to private contract activity."³⁰

Under the Texas system, court reporters are salaried county officials who are appointed by and responsible to individual judges. In addition, the present fee system accords reporters the right to sell the court's official record and retain the proceeds. In fact, the law allows official reporters to charge both the government and private individuals for official transcripts. Official reporters are also permitted to operate as independent contractors in providing other reporting services. At the same time, they are responsible for most of their own operating expenses.

Questions may be asked about current law and practice relating to official court reporters.

- Does the present method of compensation--salaries, and per diem where applicable, plus fees--result in fair and adequate remuneration?
- Is the current method of appointment of official court reporters and management of their work achieving satisfactory services at a reasonable cost to counties?
- Are the fees charged by official court reporters proper in relation to their expenses?
- Is current law governing fee setting and document standards adequate?

Several possible alternatives in the administration of court-reporting services appear to merit consideration, including changing the method of appointment, compensation, and management authority; pooling reporters on public payrolls; and using new technological aids for recording and transcription.

³⁰Ibid., p. 68.

Official court reporters are not required by law to report to the county or the state their income from fees, costs incurred in production of transcripts, total hours worked in connection with actual court business, or hours spent and income from free-lance production of transcriptions and depositions. Fees charged are indicated on official records only where certification of charges for the original transcript is required by rule in civil cases³¹ or where taxed as costs in criminal cases.³²

The discussion, consideration, and resolution of current issues might be aided if a method of required reporting of fee collections and expenses, hours worked on official duties, and employment under private contract were established. A statewide approach, perhaps in conjunction with the state certification system for court reporters initiated in 1977,³³ would seem preferable and capable of serving local needs as well.

³¹Tex. R. Civ. P. 377(f), 9th ed.

³²Tex. Code Crim. Pro. Ann. art. 40.09, sec. 5.

³³Tex. Rev. Civ. Stat. Ann. art. 2324b.

IV

STUDY OF FEES OF OFFICE

A complex statewide fee structure governs the charges imposed by the county for many operations involved in the judicial process; for the recording of legal documents; and for the issuance of licenses, titles, and similar certificates. These fees--often called "fees of office"--generate substantial revenues to finance county operations. Most revenues from these fees are not legally dedicated to financing a particular office or service and may be used for any purpose.

The major county fee offices are those of the county clerk, district clerk, county tax assessor-collector, sheriff, constable, and justice of the peace. Although the offices of the district clerk, constable, and justice of the peace are legally distinguished from county offices, the financing of these offices is a county responsibility and their fees comprise part of county revenue.

The chief functions performed in the county clerk's office relate to (1) the recording and preservation of public records such as deeds, titles, liens, bonds, and vital statistics and (2) the operation of county-level courts, including the probate court. The county clerk probably collects more individual fees than any other office.

Functions of the district clerk's office (which may be combined with the office of county clerk in counties with a population of less than 8,000) are almost exclusively related to the operation of the district court or courts. Fees for handling cases in district court differ from county court fees although the operations are similar if not identical. In multicounty judicial districts the elected district clerk of each county serves within that county only, and fee revenues are separately collected and budgeted by each county comprising the district.

The office of county tax assessor-collector derives authority for fee collections from diverse statutes relating to property taxation; to motor vehicle registration, titles, and sales taxes; and to occupation taxes. The fees authorized for assessing or collecting property taxes for the state or county are actually commissions paid on the total amount

of taxes collected and are based on a statewide formula applicable to each individual tax. Commissions for tax assessing or collecting for other local governments are variable within statutory limits.³⁴ The fees retained by the tax assessor-collector for collecting state motor vehicle registration fees and sales taxes, and for issuing certificates of title, are administrative allowances paid by the state. The county's share of motor vehicle registration fees is actually a form of shared revenue allocated to counties through a state formula. Generally these sources, including those related to occupation taxes, differ from service charges to the public.

The sheriff, as the chief county law enforcement official, and constables, who are precinct law enforcement officials, have many similar or identical duties, such as serving civil process, executing civil judgments, and executing criminal process. State fee statutes recognize this similarity and set the same statewide fees and commissions for sheriffs' and constables' offices.

The fees authorized for justices of the peace relate primarily to court operations in civil lawsuits. In contrast to county and district courts, there are no criminal filing fees in justice court. State law allows justices of the peace to retain "all fees, commissions, gifts or payments made to them for performing marriage ceremonies, for acting as registrar for the Bureau of Vital Statistics and for acting as ex officio notary public."³⁵ All justices of the peace are salaried officials paid by the county.

The practice of compensating local officials directly from fees can be traced back to medieval English justices of the peace and sheriffs. This system of paying state and local officials came under attack in the early part of this century, and a series of amendments to the Texas Constitution has practically ended it.³⁶

The commissioners courts of counties with less than 20,000 population are still permitted to compensate county officials, such as county judges, county commissioners, county clerks, county attorneys, county tax assessor-collectors, and sheriffs, on a fee basis. However, only two counties do-- Foard and Sterling--according to required reports filed with the state comptroller.³⁷

As noted, justices of the peace still retain certain fees as do official court reporters. In general, however, fees of office now seem to serve primarily as a means to recover costs. One apparent advantage of the

³⁴The Property Tax Code adopted by the 66th Legislature (Senate Bill 621) may affect all these laws in some way.

³⁵Tex. Rev. Civ. Stat. Ann. art. 3912i, sec. 10.

³⁶Texas Advisory Commission on Intergovernmental Relations, *The Constitution of the State of Texas: An Annotated and Comparative Analysis* (Austin, 1977), vol. 2, p. 803.

³⁷Tex. Rev. Civ. Stat. Ann. art. 3912e, sec. 2.

statewide fee system today is that it attempts to relate individual fees to the office and activity on which each is based. Another is that the fee for similar activity is uniform across most of the counties in the state. Because of the state's diversity, however, this general uniformity probably means that the relationship between the actual cost of the activity and the fee charged varies considerably from county to county. This variation can be affected by the frequency and extent of changes in fees made by the state, county budgeting and management practices, and the volume of each activity in a particular county.

Fee statutes require constant legislative attention. However, neither county accounting methods nor state financial reporting requirements produce detailed cost information to use as a basis for fee adjustments. Fee collections may sometimes exceed and sometimes fail to meet the operating expenses of a particular office. At the same time, specific fees may or may not provide revenues sufficient to defray the costs of the activity for which the fee is charged.

Some fees appear to have been reduced by the passage of time to no more than token charges--for example, the jury fees in criminal and civil cases in county and district courts and the trial fee in county court criminal cases. The \$5 jury fee³⁸ charged in cases of conviction in either level of court and the \$5 trial fee³⁹ charged in county court convictions have not been changed since the 1920s. The \$3 jury fee for civil suits in county courts and the \$5 jury fee for civil suits in district court were established in 1876.⁴⁰

Another element in the overall equation is the fact that many criminal fees are not collectible either because the person required to pay them is indigent, the defendant is found innocent, the case is dismissed, or some other disposition voids or renders ineffective any liability for fees. Nonrecovery of costs of service in the case of indigents and others results in costs that must be paid from other county resources.

POSSIBLE STUDY QUESTIONS

A comprehensive study of fees of office should consider the following kinds of questions.

- Are current fee rates proper in relation to cost and other considerations?
- Is the structure of fees appropriate to the pattern of existing activities and services?

³⁸Tex. Code Crim. Pro. Ann. art. 53.05.

³⁹Tex. Code Crim. Pro. Ann. art. 53.06.

⁴⁰Tex. R. Civ. P. 216, 9th ed.

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