

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Bob Frey at
Chairperson

3:30 ~~XXX~~ a.m./p.m. on February 10, 1983 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Mark Burghart, Legislative Research Department
Mike Heim, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Nedra Spingler, Secretary

Conferees appearing before the committee:

Jim Clark, Kansas County and District Attorneys Association
Charles Hamm, General Counsel, Department of Social and Rehabilitation Services
Peter Rinn, Department of Social and Rehabilitation Services
James Cobler, Director, Division of Accounts and Reports
Marjorie Van Buren, Judicial Center

The minutes of the meetings of February 7 and 8, 1983, were approved.

Jim Clark, Kansas County and District Attorneys Association, presented a proposal to be considered for introduction as a bill (Attachment No.1). It would allow the prosecutor's office to collect a fee for processing bad checks. Representative Miller made a motion to introduce the proposal as a bill, seconded by Representative Erne. Motion carried. (HB 2495)

HB 2092 - An act relating to SRS and illegal acquisition or disposition of assistance.

Charles Hamm, General Counsel for SRS, said a case in the District Court in Junction City where food stamps were used to purchase liquor prompted introduction of the bill (see Attachment No.2). Its provisions would cover the persons receiving the illegally disposed of assistance and is patterned after federal law. Only small monetary cases which can be resolved more quickly and are more appropriately handled by the state rather than the federal prosecutors would be involved.

In discussion, Peter Rinn of SRS, did not know how many times these instances occur, but the dollar figure was low. The bill would cover food stamps and durable medical assistance. It does not address large underground fraud operations which are covered by the state's theft law.

HB 2102 - An act concerning payments in settlement of certain claims against the state.

Mr. Hamm said the bill allows SRS to pay small claims against breakage and actions of its part-time homemakers who help in the homes of certain individuals. Because of rules and regulations of the Department of Administration regarding processing of claims, Mr. Hamm offered an amendment (Attachment No.3) to specifically allow SRS to expend money for small claims resulting from the homemaker program. This would result in a savings in time and paperwork.

In discussion, Jim Cobler, Accounts and Reports, Department of Administration, said the Secretary of SRS could not make decisions on payments without statutory authority.

The Chairman stated action would be taken on the bill next week. Any further suggestions from SRS and the Department of Administration should be presented to the Committee before that time.

HB 2165 - An act relating to the administration and filing of oaths of office.

Mr. Cobler said the Division of Accounts and Reports is going to a new payroll system which will reduce paper-flow, and the loyalty oaths could not be accommodated by the system. He suggested the bill's effective date be changed from publication in the statute books to publication in the official state paper. This would make it compatible with the state's payroll dates.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY,
room 526-S, Statehouse, at 3:30 ~~a.m.~~/p.m. on February 10, 1983

There was discussion in regard to eliminating the loyalty oath, but no action was taken.

Representative Duncan moved to amend HB 2165 by changing the effective date as suggested by Mr. Cobler and to recommend the bill, as amended, favorable for passage, seconded by Representative Peterson. Motion carried. Representative Cloud voted against the motion.

HB 2058 - An act relating to judgments and delinquent personal property taxes.

In discussion on the bill, the decision was made not to wait on the Kansas Bar Association's committee review of the amendments suggested by the subcommittee (Attachment No.4), Representative Peterson moved to adopt the amendments and to recommend HB 2058, as amended, favorable for passage, seconded by Representative Buehler. Motion carried.

HB 2081 - An act concerning natural gas for irrigation purposes.

The Chairman noted the representative of the Amoco Oil Company had stated that group will not oppose the bill because of the 30-day cutoff clause in contracts which the bill will not affect. It was noted that contracts cannot be assignable because of federal law. Representative Solbach moved to table the bill, seconded by Representative Justice. In discussion, Representative Solbach said the purpose of his motion was to retain the bill in case proponents furnished effective amendments. Motion carried.

HB 2114 - An act relating to judgeships in the 1st Judicial District.

Representative Peterson made a motion to recommend the bill favorable for passage, seconded by Representative Knopp. Motion carried.

HB 2075 - An act concerning transfers of real estate.

Marjorie Van Buren, Judicial Center, gave a statement (Attachment No.5) regarding the bill. She opposed adding to the responsibilities of the clerks of the district courts. She pointed out the potential problem this would create in collecting the filing fee and recommended an amendment placing the responsibility of filing on the party receiving title.

During questioning, Ms. Van Buren said she was authorized to present opinions to the legislature by the Judicial Administrator and not by the Supreme Court. She had not polled all 105 district court clerks but believed the clerks opposed the bill.

The Chairman, sponsor, said the bill was requested by a constituent who dealt with the filing system in searching for leases which required accurate information. He said the Registers of Deeds support the bill but suggest the word "transfers" be deleted because this is no longer done. No action was taken on the bill.

The Chairman adjourned the meeting at 4:50 p.m.

OFFICERS
Steven L. Opat, President
William T. North, Vice-President
Donald H. Shoop, Sec.-Treasurer
Dennis W. Moore, Past-President



DIRECTORS
Daniel F. Meara
Robert J. Frederick
Daniel L. Love
Tim R. Karstetter
Stephen R. Tatum

ATTACHMENT # 1

Kansas County & District Attorneys Association

827 S. Topeka Ave., 2nd Floor • Topeka, Kansas 66612 • (913) 357-6351

EXECUTIVE DIRECTOR • JAMES W. CLARK

February 7, 1983

The Honorable Robert Frey, Chairman
House Judiciary Committee
State Capitol, Room 112-S
Topeka, Kansas 66612

Dear Bob:

Attached is a proposed bill which would institute a collection fee on bad checks. The bill is modeled on a Texas statute, and I have included that statute as well as attorney general's opinions from Texas regarding their collection procedures. The director of the Texas District and County Attorneys Association estimates that the procedure brings in from \$3 million to \$6 million dollars per year into prosecutor's offices. Also attached is a letter from Dan Meara, Bourbon County Attorney, which shows the amount that would have been collected in Bourbon County, if these procedures were to be adopted.

I hope you will consider introducing this as a committee bill or at least proposing it through the committee. I will be happy to discuss it with you at any time.

Sincerely,

JAMES W. CLARK
Executive Director

JWC/bjk

Enclosure

OFFICE OF THE
BOURBON COUNTY ATTORNEY
COURTHOUSE
FORT SCOTT, KANSAS 66701

DANIEL F. MEARA
COUNTY ATTORNEY

TELEPHONE 316 223-2910

December 20, 1982

8983
GERALD W. HART
ASSISTANT COUNTY ATTORNEY

Mr. James W. Clark
Kansas County and District Attorneys Assn.
827 South Topeka Blvd.
Topeka, Kansas 66612

Dear Jim:

I have been thinking about the Texas Worthless Check Statute the board discussed on December 11. If this statute would have been in effect during 1982, our office would have received \$3,335.00 in addition to the restitution recovered for victims. We have a good worthless check program here, thanks to the efforts of an excellent secretary, and these added receipts could have been used to increase her salary to a level more commensurate with her abilities. In addition, with such receipts we could begin to improve our word processing equipment.

I have discussed this statute with our county commissioners and they were also very interested. I assume that it would not be difficult to obtain the endorsement of the county commissioners association, merchants groups, and any other association interested in victim's rights.

Please keep me posted on the progress of this legislation. I would be pleased to help you in any way that I can.

Sincerely yours,



Daniel F. Meara

DFM:emc

HOUSE BILL NO. _____

AN ACT concerning crimes; relating to collection fee for processing worthless checks.

New Section 1. Worthless Check Collection Fee. (1) A county or district attorney may collect, as costs for processing, a fee if the county or district attorneys office processes and collects a check, order or draft if the check, order, or draft:

(a) has been made, drawn, issued or delivered in a manner constituting a violation of K.S.A. 21-3707 or 21-3708.

(2) The county or district attorney may collect the fee from any person who is a party to the offense described in subsection (1) of this Act.

(3) The amount of the fee shall be:

(a) \$5 if the face amount of the check, order or draft is \$10 or less,

(b) \$10 if the face amount of the check, order or draft is greater than \$10, but \$100 or less.

(c) \$30 if the face amount of the check, order or draft is \$300.

(d) \$50 if the face amount of the check, order or draft is \$500.

(e) \$75 if the face amount of the check, order or draft is greater than \$500.

(4) Fees collected under this article shall be paid to the county treasurer who shall credit the same to the prosecuting attorneys training fund. Expenditures from this fund shall be paid by the county treasurer upon the order of the county or district attorney

and shall be used exclusively to defray the expenses of the county or district attorneys office. In no event may this fund be used to supplement the salary of the county or district attorney. Nothing in this Act shall be construed to decrease the total salaries, expenses and allowances which a county or district attorneys office is receiving at the time this Act takes effect.

83 Leg

As mentioned in the introduction the enactment of the Article 53.08 C.C.P., the "Hot Check Fee Act," has generated a tremendous incentive for the prosecutors to handle hot checks. Every prosecutor's office in the State of Texas should be collecting check fees, because every office needs the additional income.

The following materials are included to provide pointers on how the prosecutor may collect, and spend the fee. Like any new law enacted by the Legislature, the fee law is still a developing law and just within the last year several Attorney General opinions have been handed down interpreting it.

The following three significant points should be noted here:

1. The elected prosecutor shall not supplement his own salary from the fee.
2. The prosecutor's office is only entitled to received the fee when his office processes and collects the worthless check.
3. Records must be kept and submitted as required by the law on the fees collected. In order to assist in the record keeping, a form is included on page entitled "Monthly Check Collection Ledger." It may well be that the form may be simplified to show only the date of receipt of the fee, the check writer's name, and the amount of the fee.

THE LAW — Art. 53.08, C.C.P.

Art. 53.08 FEE FOR COLLECTING AND PROCESSING SIGHT ORDER

(a) A county attorney, district attorney, or criminal district attorney may collect a fee if his office collects and processes a check or similar sight order if the check or similar sight order:

(1) has been issued or passed in a manner which makes the issuance or passing an offense under:

- (A) Section 32.41, Penal Code;
- (B) Section 31.03, Penal Code; or
- (C) Section 31.04, Penal Code; or

(2) has been forged under Section 32.21, Penal Code.

(b) The county attorney, district attorney, or criminal district attorney may collect the fee from any person who is a party to the offense described in Subsection (a) of this article.

(c) The amount of the fee shall not exceed:

- (1) \$5 if the face amount of the check or sight order does not exceed \$10;
- (2) \$10 if the face amount of the check or sight order is greater than \$10 but does not exceed \$100;
- (3) \$30 if the face amount of the check or sight order is greater than \$100 but does not exceed \$300;
- (4) \$50 if the face amount of the check or sight order is greater than \$300 but does not exceed \$500; and
- (5) \$75 if the face amount of the check or sight order is greater than \$500.

(d) If the person from whom the fee is collected was a party to the offense of forgery under Section 32.21, Penal Code, committed by altering the face amount of the check or sight order, the face amount as altered governs for the purpose of determining the amount of the fee.

(e) Fees collected under this article shall be deposited in the county treasury in a special fund to be administered by the county attorney, district attorney, or criminal district attorney. Expenditures from this fund shall be at the sole discretion of the attorney, and may be used only to defray the salaries and expenses of the prosecutor's office, but in no event may the county attorney, district attorney, or criminal district attorney supplement his or her own salary from this fund. Nothing in this Act shall be construed to decrease the total salaries, expenses, and allowances which a prosecuting attorney's office is receiving at the time this Act takes effect.

T.D.C.A.A. MEMORANDUM

The following is a reprint of the memorandum written August 15, 1979, and mailed to you by the T.D.C.A.A. If, after almost a year of practical application, you have discovered any discrepancies or encountered any problems that are not covered, please let us know.

Does the fee apply to all checks that are collected after August 27, 1979?

The fee may be collected only on those checks that are collected and processed and which are dated August 27, 1979, or after. It appears that the fee cannot be collected if the check were given prior to the effective date of the Act. This conclusion is based on Attorney General Opinion No. M-983 (1971). This opinion held that the court costs which were added to criminal cases under Article 1083, Code of Criminal Procedure, could not be assessed where the offense was committed prior to the effective date of the Act.

Can the fee be collected on checks which are paid off before a complaint, indictment, or information is filed and on conviction as well?

The (T.D.C.A.A.) committee is of the opinion that anytime restitution is made on a check which has been referred to the prosecutor, the fee may be collected. The statute says "collected and processed." Thus, it would appear that restitution ("collected") will have to be made. If restitution is ordered as a condition of probation, then this should be considered as a "collected" check and would entitle the prosecutor to collect the fee. In such a case, the fee should be collected by the probation department and paid over to the prosecutor. You may run into some difficulty getting your judge to acknowledge that the collection fee is applicable where probation is granted, especially since the restitution money will be handled through the probation department. Nevertheless, the restitution is being made because of your collection efforts (through prosecuting the case) and the fee should be viewed as a cost of the court. It is the (T.D.C.A.A.) committee's suggestion that the entire restitution amount be repaid before the fee is collected.

Can the fee be collected when the Justice of the Peace or Sheriff receives or collects the restitution on a check that has not been filed with the prosecutor?

The fee is collectible where the prosecutor's office "collects and processes" the check. If the check were filed with the J.P. as a "bad check" under Section 32.41, Penal Code, and not processed through the prosecutor's office, then the fee should not be collected.

NOTE, however, that Art. 6252-24, V.T.C.S. provides "Any Justice of the Peace, sheriff, . . . who shall receive for collection or undertake the collection of any claim for debt for others except under and by virtue of any claim for debt for others except under and by virtue of the processes of law prescribing the duties of such officers, . . . shall be guilty of a misdemeanor . . ." See Attorney General's Opinion No. MW-222, *infra*, page . . . There may be a difference between "collecting" and "receiving" restitution in the form of a money order or cashier's check payable to the complainant; the former being prohibited and the latter lawful.

If defendant has written several checks, can a fee be assessed on each one?

There is nothing to prohibit you from collecting a fee on each check. As a practical matter, in your plea bargaining you may agree to assess the fee on only one check, conditioned upon payment of restitution on all outstanding checks.

If a defendant has more than one check on which restitution is being sought, can the check amounts be aggregated so that a larger single fee can be assessed against him?

NO. The Act specifically states that the fee is based on "the face amount of the check or sight order," not on the amount of the checks.

What can the money be used for?

The fees collected and deposited in the county treasury may be used "to defray the salaries and expenses of the prosecutor's office," but not to supplement his own salary. As a practical matter and as pointed out elsewhere in this report, the money should be used primarily to defray the costs directly attributable to the check collection and prosecution effort.

What reporting requirements, if any, must I comply with regarding collection and expenditures of the processing fee?

Since Articles 1001, et seq., C.C.P., have not been repealed, the committee is of the opinion that they should be followed to the fullest extent possible. Special attention should be paid to Article 1003, C.C.P., which controls the reporting of fees collected pursuant to H.B. 825. The requirement content of these reports is found in Article 1002, C.C.P.

Intake

Should the merchant be required to make an attempt to collect on a returned check before the prosecutor accepts it for collection?

It is strongly advised that you suggest that the local businessmen attempt to collect the check before turning it over to you.

Should the merchant be required to send the notice as provided under Articles 31.06 and 32.41, P.C., or should the prosecutor's office send the notice?

The law does not specify who is to send the notice. If the merchant sends the notice, you must make sure he does so by certified or registered mail, return receipt requested. If all the necessary paperwork is in order, and if the maker has not made payment within fifteen days from the date the notice was mailed, then you may accept the check for collection and would not be required to serve any additional notice to the issuer. It is suggested that you send a courtesy letter to the maker after it has been referred to you. But BE SURE your office and local merchants understand who sends the notice, and apply the procedure uniformly.

What happens if restitution is made directly to the merchant after the issuer has received a notice for payment from the prosecutor's office? Can the fee still be collected?

You should make it a policy to instruct your merchants not to accept any restitution directly from the issuer once the case has been referred to your office. Admittedly, most merchants are going to accept payment anyway, but try to impress upon them that all restitution payments should come through your office in order that the issuer's payment record can be accurately maintained. If the payment is made directly to the merchant, you will have a difficult time collecting your fee.

Should I send the merchant an acknowledgment letter after he has referred a check to my office?

An acknowledgment letter, informing the merchant of the various steps you will take to collect his money, is a good idea. In this form letter, you can lay out the ground rules of the process, and let him know of your policies regarding check collections. (Or send a copy of the pamphlet published through the Prosecutors Council.)

Collection

How do I set up an account to deposit the collection fees, where should it be, and what do I call it?

The Act provides that all fees shall be deposited in the county treasury, in a special fund to be administered by the prosecutor. Meet with your treasurer or, for counties with populations in excess of 190,000, your auditor (see A.G. Opinion No. MW-188), *infra*, page and set up the fund and procedural guidelines so that there is no confusion when making deposits.

Can restitution and the collection fee be paid together by the same check?

It would be advisable to have separate money orders or cashier's checks for the restitution and the fee.

Can the fees be deposited in my office's trust account, and thereafter transferred to the treasury on a weekly or monthly basis?

The Act is fairly specific about the fees being deposited in the treasury. Further, Article 1709a, V.A.C.S., requires that all fees collected by county offices must be turned over to the treasurer for deposit in the county depository. However, neither statute speaks directly to the point of *when* the transfer should take place. It will be the responsibility of your treasurer or auditor to set the procedure you will follow. (See A.G. Opinion No. MW-188, *infra*, page .) If you make deposits directly into your trust account, *always* keep two accounts—one for restitution and one for fees collected.

Should the employee(s) in my office doing the collection work be bonded?

While there is no specific statutory requirement that the employee be bonded, the committee suggests, in order to protect yourself, that an indemnity bond be secured for these employees.

If a restitution check cannot be forwarded to a merchant or payee because he has left town or refuses payment, what happens to the money and does the fee still apply?

A new statute was approved by the 66th Legislature covering the disposition of unclaimed funds held by county or precinct officers (Article 1581h, V.A.C.S.). Basically, this statute established a procedure whereby unclaimed funds (i.e., restitution) can be escheated to the county, after appropriate notice procedures. Therefore, if the restitution cannot be forwarded to the payee, it would appear to be subject to the provision of this Act. (NOTE: This statute only refers to unclaimed funds held by county or precinct offices. Unfortunately, we have not been able to find any statutory reference to district officers holding unclaimed funds.) If you choose to return the money to the issuer, it would appear that the fee should be returned as well.

Expenditures

What can the funds be used for?

The Act specifies that the fund may be used only "to defray the salaries and expenses of the prosecutor's office." Further, the Act prohibits the elected prosecutor from supplementing his or her own salary from the fund.

The primary reason for instituting the fee is to defray the direct expense of your office incident to the collection process. Ideally, the person in your office doing the actual collection work would be paid from this fund. However, you are not limited to applying the fund only to these employees; any reasonable expenditures pursuant to the official duties and responsibilities of your office may be paid from this fund.

Whose authorization is required before an expenditure can be made from the fund?

Expenditures from the fund are "at the sole discretion" of the elected prosecutor. Therefore, how the money is spent, and for what purposes, is your decision.

There are several statutory requirements, however, that apply to expenditures made from the county treasury. Article 2554, V.A.C.S., provides that all warrants and checks from treasury funds must be signed by the county treasurer, and Article 1656a, V.A.C.S., requires that the county auditor countersign all checks drawn from the county treasury. (See A.G. Opinion No. H-183 (1973).)

How do I present expenditures for payment through the county treasurer?

Probably the best way to authorize payment is through a voucher system between your office and the treasurer. The treasurer may prescribe the form and content of these vouchers, and your offices should get together and work out the logistics of establishing a voucher system.

If I use the fund to hire office personnel and/or supplement staff salaries, am I responsible for handling payroll accounting, making withholding deductions, etc., for these personnel?

It is suggested that you work out an arrangement with the county's payroll agent whereby the county remains the "employer" for these personnel and you reimburse the county from your fund for salaries, withholding expenses, etc., paid to these employees.

Must I make a report of expenditures from the fund to the Commissioner's Court?

Article 1003, C.C.P., (discussed previously) requires that a report of expenditures shall be made to "each regular term of the Commissioner's Court for each county."

Ethical Considerations

It is incumbent upon you and your office staff to operate the collection process in such a way as to preserve the financial integrity of the fund, and to leave no room for criticism of you and your staff regarding the way the fund is administered.

Should my trust account holding restitution also contain fee money?

Comingling of fees and restitution in the same trust account should be avoided in all instances. Public funds (the fees) should be kept separate and apart from restitution funds, and accurate records reflecting the sources, amounts, etc., of deposits to the fee fund must be maintained to protect yourself and your staff.

Even though I may not supplement my salary from the fund, can I purchase office equipment for myself? Can the funds be used to pay for my travel costs to seminars, meetings, etc.?

Section 1(e) of Art. 53.08, C.C.P. says the fund "may be used only to defray the salaries and expense of the prosecutor's office." Any legitimate and reasonable expenditures incident to your official responsibilities can be viewed as "expenses of the prosecutor's office," however, the committee strongly recommends that you avoid any direct or indirect expense allowance for yourself.

The Act allows fees to be assessed in ranges, for instance, not more than \$10 if the face amount of the check does not exceed \$100. Should I set a standard fee for all checks within a given range, or can I set the fee at different amounts, depending upon the facts surrounding the case?

First, the fee is permissive, and does not have to be assessed, if in your discretion you decide not to. Second, you may set the fee at any level, as long as it does not exceed the amounts allowed in the bill.

Nevertheless, it would be advisable to set some standard fee recommendations, and to apply them uniformly. You should avoid any inferences that a payment of a fee will save the defendant from prosecution. Also, you should not use the fee as a bargaining tool—don't threaten the defendant with the maximum fee if he insists on going to trial on his case.

ATTORNEY GENERAL OPINION NO. MW-188

"Fees Collected for Handling Hot Checks"

The following opinion was issued June 5, 1980, in reply to a request from the Harris County Attorney's Office:

Opinion No. MW-188

Re: Fees Collected in connection with handling hot checks.

You ask the opinion on the following questions:

- (1) May the Harris County Auditor prescribe or require the deposit of the fees collected by the Harris County District Attorney pursuant to Vernon's Ann. C.C.P. art. 53.08, in Fund 521, District Attorney Administration Fund, or in the Officers Fee Fund, pursuant to art. 3912e, Sec. 5, V.A.C.S.?
- (2) May the County Auditor prescribe accounting and control procedures for the fees collected pursuant to Vernon's Ann. C.C.P., art. 53.08?
- (3) May the County Auditor prescribe accounting and control procedures for the Justices of the Peace as they pertain to the fees collected in the processing of hot checks for and on behalf of the District Attorney?
- (4) May the County Auditor prescribe that a fee be assessed and collected under Vernon's Ann. C.C.P. art. 53.08, Sec.(a) (2) (b), in each and every instance in order to have proper accounting and controls for all fees?

Article 53.08, Code of Criminal Procedure, provides in pertinent part:

- (a) A . . . district attorney . . . may collect a fee if his office collects and processes a check or similar sight order if the check or similar sight order:
 - (1) has been issued or passed in a manner which makes the issuance or passing an offense. . . .
- (e) Fees collected under this article shall be deposited in the county treasury in a special fund to be administered by the . . . district attorney. . . . Expenditures from this fund shall be at the sole discretion of the attorney, and may be used only to defray the salaries and expenses of the prosecutor's office, but in no event may the . . . district attorney . . . supplement his or her own salary from this fund. Nothing in this Act shall be construed to decrease the total salaries, expenses, and allowances which a prosecuting attorney's office is receiving at the time this Act takes effect.

Acts 1979, 66th Leg., ch. 734, Sec. 1, at 1802.

You advise us that "on September 6, 1979, the Harris County Commissioners Court adopted an Order establishing Fund 521, District Attorney Administration Fund, for the purposes of depositing the fees collected in the processing of hot checks, and that these funds be deposited periodically into the General Fund to defray the operational expenses of the District Attorney's office."

Article 3912e, section 5, V.T.C.S., provides in pertinent part:

It shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law

to be assessed and collected for all official service performed by them. As and when such fees are collected they shall be deposited in the Officers' Salary Fund, or funds provided in this Act. . . .

Article 3912e, section 5, conflicts with article 53.08, section (e), where it requires that fees collected "be deposited in the Officers' Salary Fund, or funds provided in this Act." The more specific and more recently enacted statute, article 53.08, prevails as an exception to section 5. *State ex rel. Watkins v. Morgan*, 555 S.W.2d 217 (Tex.Civ.App.—Waco 1977, writ ref'd n.r.e.); *Texas State Board of Pharmacy v. Kittman*, 550 S.W.2d 104 (Tex.Civ.App.—Tyler 1977, no writ); Attorney General Opinion No. H-834 (1976). As a result, the fees in question should be deposited in the District Attorneys Administration Fund for use in his sole discretion.

Article 1656a, V.T.C.S., provides in part that:

The County Auditor . . . shall prescribe the system of accounting for the county and the forms to be used by the District Clerk, District Attorney and all county and precinct officers and by all persons in the collection and disbursement of county revenues, funds, fees, and all other money collected in an official capacity whether belonging to the county, its subdivisions or precincts, or to, or for the use or benefit of, any person, firm, or corporation; he shall prescribe the mode and manner in which the District Clerk, District Attorney and all county precinct officers shall keep their accounts, and he shall have the power to require all officers to furnish monthly, annual, or other reports under oath of all moneys, taxes, or fees of every nature received, disbursed, or remaining on hand; and in connection with such reports he shall have the right to count the cash on hand with such officer, or to verify the amount on deposit in the bank in which such officer may have placed the same for safekeeping. *He shall have the power to adopt and enforce such regulations not inconsistent with the Constitution and laws as he may deem essential to the speedy and proper collection and checking of, and accounting for, the revenues and other funds, and fees belonging to the county or to any person, firm, or corporation for whom any of said officers may have made collections, or for whose use or benefit they may have received or may hold such funds.* (Emphasis Added)

Article 1656a, which applies to counties with population in excess of 190,000, clearly gives the auditor discretion to prescribe procedures for the deposit of fees and disbursement of funds provided for in article 53.08, section (e), Code of Criminal Procedure. See Attorney General Opinion No. H-183 (1973). We find no conflict between the district attorney's limited statutory discretion to determine the purpose for which expenditures from the fund are to be made and the auditor's statutory power to prescribe accounting and control procedures for making deposits and disbursements.

Likewise, the auditor may prescribe accounting and control procedures as they pertain to Justices of the Peace for any fees which may be lawfully collected by them in the processing of hot checks for and on behalf of the District Attorney.

Article 6252-24, V.T.C.S., relates to "Collecting debt for others," and provides in part:

Any Justice of the Peace, sheriff, constable or other peace officer in this State, who shall receive for collection or undertake the collection of any claim for debt for others except under and by virtue of the processes of law prescribing the duties of such officers, or who shall receive compensation therefor except as prescribed by law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than Two Hundred Dollars nor more than Five Hundred Dollars, and in addition to such fine may be removed from office.

While the clear language of this statute prohibits a justice of the peace from the collect of private debts, or from collecting restitution on dishonored checks, See *Lombardino v. Fireman's and Policeman's Civil Service Commission of the city of San Antonio*, 310 S.W.2d 651 (Tex.Civ.App. 1958) error ref'd n.r.e.), and Attorney General Opinion No. C-190 (1963), a justice of the peace may receive certain fees and costs on behalf of the county or its officers which must be paid over to the parties entitled to receive them, and he may "become the custodian of funds paid into the registry of his court during the progress of a suit, to await its final determination." Cf. *Bray-Robinson-Curry Woolen Mills v. W. F. Walker & Son, et al*, 165 S.W. 107 (Tex.Civ. App.—Texarkana 1914, no writ).

The ministerial function of collecting fines and fees in behalf of the county or its officers in matters pending within his court and within his jurisdiction, which must be paid over to the county treasurer at stated intervals, is not one of the prohibited acts contemplated by article 6252-24, and auditor is empowered by article 1656a to prescribe accounting and control procedures therefor.

While article 1656a, V.T.C.S., empowers the county auditor to prescribe the "system of accounting" and the "mode and manner" in which "all officers" in the county make collections and disbursement of funds, he does not have the power to impose a fee or require that a fee be assessed and collected in each and every instance under article 53.08, section (a) (2) (b), Code of Criminal Procedure, which provides:

The county attorney, district attorney, or criminal district attorney *may* collect the fee from any person who is a party to the offense described. . . .

SUMMARY

The Harris County auditor may prescribe accounting and control procedures for all fees collected pursuant to article 53.08, Code of Criminal Procedure, including their deposit in Fund 521, District Attorney Administration Fund. The county auditor may prescribe accounting and control procedures for justices of the peace as they pertain to the fees collected in the processing of hot checks for and on behalf of the district attorney.

ATTORNEY GENERAL OPINION NO. MW-222

"Authority of a Justice of the Peace to Collect Restitution on Dishonored Checks"

The following opinion was issued August 20, 1980, in reply to a request from the Tarrant County Criminal District Attorney's Office:

Opinion No. MW-222

You have requested our opinion as to whether a justice of the peace is authorized to collect restitution on behalf of the holder of a dishonored check. You have not inquired about, and we do not address, the collection by or on behalf of the office of district attorney pursuant to article 53.08 of the Code of Criminal Procedure. Article 6252-24, V.T.C.S., formerly article 380a of the old Penal Code, provides, in pertinent part:

Any Justice of the Peace, sheriff, constable or other peace officer in this State, who shall receive for collection or undertake the collection of any claim for debt for others except under and by virtue of the processes of law prescribing the duties of such officers, or who shall receive compensation therefor except as prescribed by law, shall be guilty of a misdemeanor. . . .

In Attorney General Opinion No. C-190 (1963), this office said that a sheriff was prohibited from collecting restitution on dishonored checks:

Article 380a not only prohibits the collection of claims for debts for compensation but also the collection of claims of debts for others except under and by virtue of the processes of law prescribing the duties of such officers. No enactment exists which prescribes as one of the duties of a sheriff, the collecting of such claims for debts.

A violation occurs under article 6252-24 unless the justice of the peace is authorized by some other statute to act as a debt collector for private individuals. As long ago as 1914, a court held that there is no statute:

which makes it the duty of a justice of the peace to act as a private collector of claims *Bray-Robinson-Curry Woolen Mills v. W. F. Walker & Son*, 165 S.W. 107, 110 (Tex.Civ.App.—Texarkana 1914, no writ). See also *Polk v. Peterson*, 93 S.W. 504 (Tex.Civ.App. 1906, writ dism'd). Likewise, no statute exists today which would bring a justice's efforts to collect restitution under the "processes of law" necessary to avoid the prohibition of article 6252-24. We conclude therefore that a justice of the peace is not authorized to collect restitution on behalf of the holder of a dishonored check. See Code Crim. Proc. art. 53.08; Attorney General Opinion No. MW-188 (1980).

SUMMARY

A justice of the peace is not authorized to collect restitution on behalf of the holder of a dishonored check.

ATTORNEY GENERAL OPINION NO. MW-241

"Legality of Services Performed by District Attorney's Office in Collection of Hot Checks"

The following opinion was issued September 12, 1980, in reply to a request from the Bexar County Criminal District Attorney's office:

Opinion No. MW-241

You have requested our opinion as to whether a district attorney may lawfully collect unpaid checks for private persons. The 66th Legislature enacted article 53.08 of the Code of Criminal Procedure, Acts 1979, 66th Legislature, chapter 734, section 1, at 1802, which provides in pertinent part:

- (a) A county attorney, district attorney, or criminal district attorney may collect a fee if his office collects and processes a check or similar sight order if the check or similar sight order:
 - (1) has been issued or passed in a manner which makes the issuance or passing an offense under:
 - (A) Section 32.41, Penal Code;
 - (B) Section 31.03, Penal Code; or
 - (C) Section 31.04, Penal Code; or
 - (2) has been forged under section 32.21, Penal Code.

The statute permits the district attorney to collect the fee "from any person who is a party to the offense," and establishes a maximum fee schedule based on the face amount of the check collected. Sections (b), (c).

Although other public officials are specifically prohibited from undertaking "the collection of any claim for debt for others," article 6252-24, V.T.C.S., the addition of article 53.08 to the Code of Criminal Procedure removes any doubt as to whether a county attorney, district attorney or criminal district attorney may do so. It is thus our opinion that, pursuant to article 53.08 of the Code of Criminal Procedure, a district attorney may lawfully collect unpaid checks for private persons.

SUMMARY

Pursuant to article 53.08 of the Code of Criminal Procedure, a district attorney may lawfully collect unpaid checks for private persons.

PROPOSAL FOR LEGISLATION

ATTACHMENT # 2

Agency: SRS

What is the nature of the existing problem requiring legislative action?

K.S.A. 39-717 prohibits a welfare recipient from illegally disposing of assistance benefits such as food stamps and durable medical equipment.

The District Court in Junction City, Kansas has ruled that the person receiving the illegally disposed of assistance (in this instance a liquor store clerk exchanging liquor for food stamps) may not be prosecuted under this statute even if such person knows that the sale or transfer is in violation of the law.

What are the alternative solutions to the problem?

Amend K.S.A. 39-717 to also cover the person receiving the illegally disposed of assistance when such person has knowledge that such sale or transfer is in violation of the law.

A second alternative would be to refer all such cases to the U.S. Attorney for prosecution. This alternative is probably not feasible because of the small dollar amounts that are usually involved in illegal transfers of assistance benefits.

What legislative alternative is recommended to eliminate the problem?

Amend K.S.A. 39-717 to also cover the person receiving the illegally disposed of assistance when such person has knowledge that such sale or transfer is in violation of the law.

STATE DEPARTMENT OF SOCIAL & REHAB. SERVICES
SEP 27 1982
RECEIVED
LEGAL DIVISION

Federal law makes it a crime to acquire or possess welfare benefits - including Food Stamps - unless the possession is authorized by program rules etc, Title 7 U.S. Code Sect 2024(b)

HOUSE BILL No. 2102

By Committee on Public Health and Welfare

(By request)

1-25

0018 AN ACT concerning certain claims against the state; providing
0019 authority for certain state agencies and officers of the state to
0020 make payments in settlement of such claims; amending K.S.A.
0021 46-922 and repealing the existing section.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 46-922 is hereby amended to read as fol-
0024 lows: 46-922. As used in this section and in K.S.A. 46-923, the
0025 term "state agency" shall have the meaning ascribed thereto in
0026 K.S.A. ~~1980~~ 1982 Supp. 75-3701, and amendments thereto. The
0027 head of any state agency is authorized to make payment to the
0028 officers or employees of such state agency for property damage or
0029 loss occurring while ~~such~~ *that* officer or employee is acting
0030 within the scope of such office or employment if such property
0031 loss or damage, in the opinion of ~~such~~ *the* state agency head, did
0032 not occur as a result of negligence of the claimant. ~~Also,~~ The
0033 head of any state agency is authorized to make payment to any
0034 other person for property damage or loss occurring under cir-
0035 cumstances which establish, in the state agency head's opinion,
0036 that such damage or loss was caused by ~~the negligence~~ *[an act]* of
0037 the state or any agency, officer or employee thereof. No payment
0038 shall be made under this section on any claim for an amount in
0039 excess of ~~five hundred dollars (\$500)~~ \$500.

0040 Sec. 2. K.S.A. 46-922 is hereby repealed.

0041 Sec. 3. This act shall take effect and be in force from and
0042 after its publication in the statute book.

the negligence

Delete

The secretary of social and rehabilitation services is authorized to make payment from funds appropriated to the secretary for the homemaker program to any person for property damage or loss caused by an act of a homemaker employed by the secretary.

ATTACHMENT # 3

HOUSE BILL No. 2058

By Representative Friedeman

1-20

0015 AN ACT relating to judgments rendered on delinquent personal
 0016 property taxes; amending K.S.A. 1982 Supp. 79-2101 and re-
 0017 pealing the existing ~~section~~. 79-2017 and
 0018 *Be it enacted by the Legislature of the State of Kansas:* sections
 0019 ~~Section 1.~~ K.S.A. 1982 Supp. 79-2101 is hereby amended to Insert section 1, attached
 0020 read as follows: 79-2101. All the taxes on personal property that Sec. 2
 0021 shall remain due and unpaid on the ~~sixteenth day~~ of February 16
 0022 or the first day of July 1 shall be collected in the following
 0023 manner:
 0024 The county treasurer shall between the ~~twentieth and twenty-~~
 0025 ~~fifth days~~ of February 20 and February 25 send a notice by mail
 0026 to the person, firm, unincorporated association, company or cor-
 0027 poration to whom such taxes were assessed, and which remain
 0028 unpaid on February ~~sixteenth~~ 16 of any year, to its post-office
 0029 address as shown by the records in the office of the county clerk.
 0030 The county treasurer shall between the ~~tenth and the fifteenth~~
 0031 ~~days~~ of July 10 and July 15 send a notice by mail to the person,
 0032 firm, unincorporated association, company or corporation to
 0033 whom such taxes were assessed, and which remain unpaid on
 0034 July ~~first~~ 1 of any year, to its post-office address as shown by the
 0035 records in the office of the county clerk. Failure to receive any
 0036 such notice shall not relieve such person, firm, unincorporated
 0037 association, company or corporation defaulting in payment of
 0038 personal taxes from any interest and costs attached thereto. Such
 0039 notice shall state the amount of personal tax charged against ~~said~~
 0040 ~~the party~~, and notify ~~said the party~~ that ~~said the tax~~ may be paid by
 0041 paying interest thereon from the date the same became due and
 0042 payable to date of payment computed under the provisions of
 0043 K.S.A. 1982 Supp. 79-2004a, and amendments thereto.

0081 shall enter the total amount thereof in the judgment docket and
 0082 note the same in a numerical index for the judgment docket, or
 0083 shall enter the total amount thereof in another docket maintained
 0084 for such purpose. No fee shall be charged for entering the same.
 0085 ~~Said~~ *Such* total amount shall become a judgment in the same
 0086 manner and to the same extent as any other judgment under the
 0087 code of civil procedure and shall become a lien on real estate from
 0088 and after the time of the filing thereof. A transcript of ~~said~~ *such*
 0089 judgment may be filed with the clerk of the district court in any
 0090 other county and when it is entered in the manner provided above
 0091 it shall become a lien upon real estate located in such county in
 0092 the same manner as is provided in case of other judgments, except
 0093 that no fee shall be charged for entering the same. Execution,
 0094 garnishment or other proceedings in aid of execution may issue
 0095 within the county or to any other county on ~~said~~ *the* judgment in
 0096 like manner as on judgments under the code of civil procedure
 0097 except that any real estate taken upon execution for the collection
 0098 of such taxes shall be sold without appraisalment. None of the
 0099 exemptions provided for in the code of civil procedure shall
 0100 apply to any such judgment but no such judgment secured for
 0101 taxes on personal property shall be levied against a homestead.

0102 At the time of filing the abstract of the taxes, interest, penalties
 0103 and costs and the last tax warrant with the clerk of the district
 0104 court, the county treasurer shall serve notice, in writing, on the
 0105 county ~~attorney of such filing~~ and it shall be the duty of the
 0106 county ~~attorney~~ to commence such proceedings as are necessary
 0107 for the collection of such judgment. ~~If execution shall not be sued~~
 0108 ~~out within five (5) years from the date of the entry of any such~~
 0109 ~~judgment, or if five (5) years shall have intervened between the~~
 0110 ~~date of the last execution issued on such judgment, and the time~~
 0111 ~~of suing out another writ of execution thereon, such judgment~~
 0112 ~~shall become dormant, and shall cease to operate as a lien on the~~
 0113 ~~real estate of the delinquent taxpayer. Such dormant judgment~~
 0114 ~~may be revived in like manner as dormant judgments under the~~
 0115 ~~code of civil procedure. Any such judgment uncollected after 20~~
 0116 ~~years may be allowed to become dormant if the county commis-~~
 0117 ~~sioners determine, after consideration of all relevant facts, that it~~

of the filing

or district

0118 ~~is not reasonable to expect that such judgment will be collected.~~

0119 3 ~~Sec. 2~~ K.S.A. 1982 Supp. 79-2101 is hereby repealed.

0120 4 ~~Sec. 3~~ This act shall take effect and be in force from and after

0121 its publication in the statute book.

79-2017 and

are

If execution is not sued out within 10 years after the date of entry of the judgment, execution shall not be issued on the judgment thereafter and the judgment shall be released, except that the judgment shall remain a lien on the real estate of the delinquent taxpayer and execution may be issued and levied on that real estate at any time

Section 1. K.S.A. 1982 Supp. 79-2017 is hereby amended to read as follows: 79-2017. In all counties having a population of more than ~~one-hundred-thousand-(100,000)~~ 100,000, all taxes on personal property that shall remain due and unpaid on ~~the sixteenth--day-of~~ February 16 or ~~the-first-day-of~~ July 1 shall be collected in the following manner:

The county treasurer ~~shall,~~ on or before ~~the--twenty-fifth day-of~~ March 25, ~~shall~~ send a notice by mail to the person, firm, unincorporated association, company or corporation to whom such taxes were assessed, and which remain unpaid on February ~~sixteenth~~ 16 of any year, to its post office address as shown by the current tax roll.

The county treasurer ~~shall,~~ on or before ~~the--twenty-seventh day--of~~ July 27, ~~shall~~ send a notice by mail to the person, firm, unincorporated association, company or corporation to whom such taxes were assessed, and which remain unpaid on July ~~first~~ 1 of any year, to its post office address as shown by the current tax roll.

Failure to receive any such tax notice shall not relieve such person, firm, unincorporated association, company or corporation defaulting in payment of personal taxes from any interest and costs attached thereto. Such notice shall state the amount of personal tax charged against ~~said~~ the party, and notify ~~said~~ the party that ~~said~~ the tax may be paid by paying the amount of the tax as assessed and interest the amount of which shall be computed in accordance with the provisions of K.S.A. ~~1982-Supp-~~ 79-2004a, and amendments thereto, on the delinquent tax.

The county treasurer is hereby authorized to accept payment of delinquent taxes in full without payment of the interest due upon such delinquent taxes if the amount of the interest due is less than ~~one-dollar-(\$1)~~ \$1 and is further authorized to accept as payment in full, any interest payment in an amount not less than ~~one-dollar-(\$1)~~ \$1 less than the full amount of the interest due.

~~Should-such~~ if taxes, due and unpaid on ~~the-sixteenth-day-of~~ February 16 remain unpaid for a period of ~~twenty-five-(25)~~ 25 days after the mailing of such notice, or taxes due and unpaid on the first day of July remain unpaid for a period of ~~fourteen-(14)~~ 14 days after the mailing of such notice, the county treasurer shall forthwith issue a warrant under ~~said~~ the treasurer's hand directed to the sheriff of the county, commanding ~~said~~ the sheriff to levy the amount of such unpaid taxes and the amount of the interest thereon, together with the sheriff's fees for collecting the same, upon any personal property, tangible or intangible, of the person, firm, unincorporated association, company or corporation to whom such taxes were assessed.

To allow the time necessary for preparation of such warrants, the county treasurer shall not receive any payment of delinquent personal property taxes or interest thereon, due and unpaid on ~~the--sixteenth--day--of~~ February 16, during a period beginning the ~~twenty-sixth~~ 26th day after mailing of notices and extending through the last regular business day of April in any year or taxes or interest due and unpaid on ~~the-first-day-of~~ July 1, during a period beginning the ~~fifteenth~~ 15th day after mailing of such notices and extending through the regular business day of ~~the-fifteenth-day-of~~ August 15 in any year. Such warrant shall be delivered to the sheriff by the county treasurer before the first regular business day in May and the ~~fifteenth~~ 15th regular business day in August in each year. Upon receipt of such tax warrant, the sheriff shall proceed to collect such taxes the same as upon execution, except that where such taxes were levied and assessed pursuant to K.S.A. 79-329 ~~to~~ through 79-334, ~~inclusive,~~ and-any and amendments thereto, ~~the-same~~ they shall be collected as follows:

The sheriff shall cause notice to be given by registered mail to the purchaser of the oil and gas from such lease of the amount of such delinquent taxes and the name of the person against whom ~~the-same~~ they were assessed and from and after the receipt of such notice such purchaser shall not pay to the person

owing the taxes any of the proceeds of the sale of any oil or gas from such lease, but shall pay the same to ~~said~~ the sheriff until the full amount of such taxes and costs are paid after which ~~said~~ the purchaser may resume the payments for such oil or gas to such person, but this exception shall not prevent the levy of an execution and sale of the physical personal property on any such lease for the payment of delinquent taxes owed by the owner thereof.

The sheriff, as soon as ~~said~~ the sheriff ~~shall--collect~~ collects the tax warrant, shall make a return thereof and shall make a return of all tax warrants delivered to ~~said~~ the sheriff on or before ~~the-first-day-of~~ October 1 of the year following the year in which ~~said~~ the tax was levied. If the warrant so returned ~~shall--show~~ shows that the tax has been collected, the sheriff shall pay ~~the-same~~ it to the county treasurer; but if such return ~~shall--show~~ shows that such tax has not been collected, ~~then~~ the county treasurer shall file with the clerk of the district court of ~~said~~ the treasurer's county an abstract of the total amount of unpaid taxes and interest due plus penalties and costs, accompanied by the last tax warrant. ~~Said~~ The clerk shall enter the total amount thereof in the judgment docket and note the same in a numerical index for the judgment docket, or shall enter the total amount thereof in another docket maintained for ~~such~~ that purpose. No fee shall be charged for either such entry. ~~Said~~ The total amount shall become a judgment in the same manner and to the same extent as any other judgment under the code of civil procedure and shall become a lien on real estate from and after the time of ~~the~~ its filing ~~thereof~~. A transcript of ~~said~~ the judgment may be filed with the clerk of the district court in any other county and when it is entered in the manner provided above it shall become a lien upon real estate located in such county in the same manner as is provided in case of other judgments. No fee shall be made for entering the ~~same~~ lien. Execution, garnishment or other proceedings in aid of execution may issue within the county or to any other county on ~~said~~ the judgment in ~~like~~ the

same manner as on judgments under the code of civil procedure except that any real estate taken upon execution for the collection of such taxes shall be sold without appraisalment. None of the exemptions provided for in the code of civil procedure shall apply to any such judgment but no such judgment secured for taxes on personal property shall be levied against a homestead.

At the time of filing the abstract of the taxes, interest, penalties and costs and the last tax warrant with the clerk of the district court, the county treasurer shall serve notice, in writing, on the county counselor of such filing and it shall be the duty of the county counselor to commence such proceedings as are necessary for the collection of such judgment. ~~If execution shall not be sued out within five (5) years from the date of the entry of any such judgment, or if five (5) years shall have intervened between the date of the last execution issued on such judgment and the time of suing out another writ of execution thereon, such judgment shall become dormant, and shall cease to operate as a lien on the real estate of the delinquent taxpayer. Such dormant judgment may be revived in like manner as dormant judgments under the code of civil procedure. Any such judgment uncollected after twenty (20) years may be allowed to become dormant if the county commissioners determine, after consideration of all relevant facts, that it is not reasonable to expect that such judgment will be collected~~ If execution is not sued out within 10 years after the date of entry of the judgment, execution shall not be issued on the judgment thereafter, and the judgment shall be released, except that the judgment shall remain a lien on the real estate of the delinquent taxpayer and execution may be issued and levied on that real estate at any time.

Summary of Testimony
on
HB 2075

Marjorie J. Van Buren
Office of Judicial Administration
Kansas Unified Court System

If this committee finds that real estate title transfers as a result of court decrees and judgments should be filed with the Register of Deeds, we would oppose giving to the State the responsibility of filing.

It should be the responsibility of the parties to see that such changes are filed wherever as a matter of public policy they should be registered.

We recommend an amendment to HB 2075 to make it the responsibility of the party receiving title rather than the clerk of court to file the decree or judgment with the appropriate county officers.