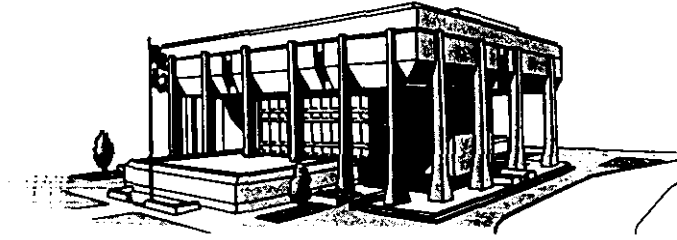


TAYLOR COUNTY
COURTHOUSE
300 OAK
ABILENE, TX 79602-1577

TELEPHONE NUMBERS
(915) 674-1261
(800) 284-4038
FAX 674-1365



JAMES EIDSON
CRIMINAL DISTRICT ATTORNEY
42ND, 104TH AND 350TH
JUDICIAL DISTRICTS OF TEXAS

RECEIVED

SEP 16 1999

Opinion Committee

ML-40996-99
40996

September 13, 1999

Attorney General's Office
Opinion Committee
P. O. Box 12548
Austin, Texas 78711

RQ-0113-JC

RE: Administrative fees charged on cash bail bonds

Dear Sir or Madam:

Our specific question for review and opinion is: Does §117.055, Local Government Code (or any other statute) allow a county or district clerk to withhold a 5% fee, up to \$50.00 (or any other reasonable amount) from cash funds deposited with the clerk as a bail bond under Article 17.02, Code of Criminal Procedure, when the defendant has complied with the conditions of his bond?

Our County Clerk has been led to believe by information received at a seminar for clerks that her office may assess an "administrative" fee of 5% (up to \$50.00) for processing and handling cash deposited with the clerk as bail bonds. Our cash bail bonds are deposited in a non-interest bearing account, so §117.054, Local Government Code, is not implicated. It is our understanding that several counties' clerks have implemented this process. Our County Clerk referred our office to Local Government Code §117.055 as authority for this administrative fee.

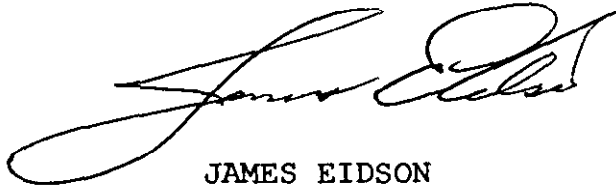
Article 17.02 provides that "any cash funds deposited" as cash bail bonds "shall be refunded to the defendant if and when the defendant complies with the conditions of his bond, and upon order of the court." If "any" really means "all," it appears that the clerk is obliged to return all funds, i.e., without deducting any fees or expenses, to the defendant when the conditions of the bond have been met.

We are aware of the provisions of Government Code §311.026 that a special or local provision controls over a general provision, and the general principle that when two statutes conflict, the specific controls over the general. See, e.g., *Mitchell v. City of Dallas*, 855 S.W. 2d 741 (Tex. App. - Dallas 1993), *aff'd*, 870 S.W. 2d 21. While Article 17.02 relates to specifically to bail bonds, and §117.055 relates in a general fashion to funds in the county's registry that have not earned interest, it may not necessarily follow that Article 17.02 controls or precludes application of §117.055.

We note that several opinions from your office may have some bearing on disposition of this issue. Those of which we are aware are DM-282, January 10, 1994; Letter Opinion No. 96-023, February 29, 1996; DM-348, May 16, 1995; JM-1162, April 23, 1990. We are also aware of the basic proposition, recognized in case law, that "the prime object or purpose of bail is to secure the presence of an accused upon trial of an accusation against him. It is not a revenue measure" *McConathy v. State*, 528 S.W. 2d 594, 596 (Tex. Crim. App. 1975) (emphasis added). While *McConathy* went on to say bail was not a substitute for a "fine" or a "penalty," rather than a "fee," the basic proposition above may have some bearing on disposition of this issue.

Please review this inquiry, research the matter, and issue an opinion on this inquiry so that we may properly advise our clerks. Thank you for your attention to this matter and your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "James Eidson".

JAMES EIDSON
TAYLOR COUNTY CRIMINAL DISTRICT ATTORNEY