



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

June 2, 1988

Honorable John Vance
District Attorney
Civil Section
Services Building
Dallas, Texas 75202

LO-88-64

Dear Mr. Vance:

You ask several questions about former article 3926a, V.T.C.S., which is now codified as section 118.131 of the Local Government Code. Section 118.131 authorizes county commissioners courts to set fees to be charged for services of sheriffs and constables. Attorney General Opinion JM-880 (1988) determined that section 118.131 was unconstitutional as applied to fees for services rendered in connection with criminal proceedings. Your questions relate to fees charged in connection with civil proceedings.

In 1987 the legislature repealed article 3926a and reenacted it as section 118.131 of the Local Government Code. Acts 1987, 70th Leg., ch. 149, § 49(1), at 1307. Section 118.131, as it appears in the legislation enacting the Local Government Code, provides:

(a) The commissioners court of a county may set reasonable fees to be charged for services by the offices of the sheriff and constables.

(b) The commissioners court may not set fees higher than is necessary to pay the expenses of providing the services.

(c) If the commissioners court does not set fees under this section, the fees for services by the offices of the sheriff and constables are those fees provided by law in effect on August 31, 1981.

In the same session in which the legislature adopted the Local Government Code it amended article 3926a, V.T.C.S., to add the following provisions:

(c) A commissioners court may not set fees pursuant to this article more than once during any one-year period.

(d) The commissioners court must set the fees pursuant to this article before October 1 of each year to be effective January 1 of the following year.

(e) A notice setting out the fees shall be posted in the same manner in which notices are posted under Article 2347, Revised Statutes; and shall be posted in the offices of the county officials who are authorized to charge the fees.

(f) The commissioners court shall provide written notice of the amounts of the fees set pursuant to this article not later than October 15 of each year to:

(1) the commissioners court of each county in this state;

(2) any statewide association of counties or of officers of counties that requests in writing before September 30 to be informed; and

(3) the State Bar of Texas.

(g) Each commissioners court that receives a notice under Subdivision (1) of Subsection (f) of this article shall furnish the notice to its district clerk, county clerk, justices of the peace, sheriff, and constables.

Acts 1987, 70th Leg., ch. 143, § 1, at 313.

The repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code. Gov't Code § 311.031(c). The amendment is preserved and given effect as part of the code provision. Id. Therefore, the substance of the 1987 amendment to article 3926a is also part of section 118.131 of the Local Government Code.

You first ask what are "reasonable" fees for purposes of section 118.131. The determination of what fees are reasonable requires fact findings, and we are unable to make fact findings in the opinion process. Section 118.131 does, however, set a ceiling on what can constitute reasonable fees. It provides that fees may not be "higher than is necessary to pay the expenses of providing the services."

You also ask whether the commissioners court's authority to set fees applies to fees for services in an individual case or to the fees for all such services for a fiscal year. By providing that the commissioners court may set fees only once a year and that it must adopt fee schedules several months before they go into effect, the 1987 amendment to article 3926a makes clear that the commissioners court is authorized to set a fee schedule, not to set fees for individual cases. Your specific question is whether the provision that limits fees to the amounts "necessary to pay the expenses of providing the services" is a limit on the fees that may be charged in an individual case. Because the provisions clearly authorize the commissioners court to adopt a fee schedule, not to set fees for individual cases, the cap on fees applies to fees in the aggregate. In other words, the commissioners court should set fees in an amount so that the total fees collected during the year do not exceed the total cost of providing the services during the year.

Very truly yours,



Sarah Woelk
Assistant Attorney General
Opinion Committee

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Ref. RQ-1450
ID# 3539