

# COUNTY of HIDALGO



EDINBURG, TEXAS 78539

HIDALGO COUNTY AUDITOR'S OFFICE  
 Hidalgo County Administration Building  
 2808 South Business Highway 281  
 Edinburg, Texas 78539-6243  
 PHONE: (956) 318-2511  
 FAX: (956) 318-2577  
 WEBSITE: [www.co.hidalgo.tx.us/auditor](http://www.co.hidalgo.tx.us/auditor)

March 14, 2012

Honorable Rene Guerra  
 Hidalgo County Criminal District Attorney  
 Courthouse, 3<sup>rd</sup> Floor  
 100 N. Closner  
 Edinburg, Texas 78539

**Re: Bond Forfeiture Commissions**

Dear Mr. Guerra:

This letter is to notify you of funds reserved in the General Fund that represent collections of bond forfeiture commissions pursuant to Section 41.005 of the Government Code. The total amount reserved as of December 31, 2011 is \$216,415.09 as follows:

Year	County Clerk Revenues	District Clerk Revenues	Expenditures	Amount Reserved
2000	550.00	-	\$ -	550.00
2001	8,242.50	-	-	8,242.50
2002	6,000.00	5,470.00	-	11,470.50
2003	9,367.86	20,302.94	-	29,670.80
2004	11,001.44	14,461.51	-	25,462.95
2005	5,907.54	7,338.16	-	13,295.70
2006	9,662.89	21,029.73	-	30,692.62
2007	24,184.95	6,000.00	-	30,184.95
2008	12,865.97	6,082.75	-	18,948.72
2009	17,434.52	14,094.04	-	31,528.56
2010	11,800.82	2,153.82	-	13,954.64
2011	1,836.15	577.00	-	2,413.15
	<b>\$ 118,855.14</b>	<b>\$ 97,559.95</b>	<b>\$ -</b>	<b>\$ 216,415.09</b>


**HIDALGO COUNTY DISTRICT JUDGES**

RICARDO P. RODRIGUEZ, JR. JUDGE, 9<sup>th</sup> D.C.   
 RODOLFO DELGADO JUDGE, 8<sup>th</sup> D.C.   
 J. R. "BOBBY" FLORES JUDGE, 13<sup>th</sup> D.C.   
 ROSE ELEFRIA REYNA JUDGE, 26<sup>th</sup> D.C.   
 ASAN R. PARTIDA JUDGE, 17<sup>th</sup> D.C.   
 MARIO E. RAMIREZ, JR. JUDGE, 32<sup>nd</sup> D.C.   
 NOE GONZALEZ JUDGE, 17<sup>th</sup> D.C. OVERSEER   
 LETICIA LOPEZ JUDGE, 39<sup>th</sup> D.C.   
 ADA SALINAS FLORES JUDGE, 38<sup>th</sup> D.C.   
 ISRAEL RABON, JR. JUDGE, 43<sup>rd</sup> D.C.   
 JESSE CONTRERAS JUDGE, 44<sup>th</sup> D.C.

Honorable Rene Guerra  
March 14, 2012  
Page 2 of 2

Please contact the Department of Budget and Management in order to appropriate these available funds.

Sincerely,



Raymundo Eufrazio, CPA  
Hidalgo County Auditor

CC: Mr. Sergio Cruz, Budget Officer

---

**HIDALGO COUNTY DISTRICT JUDGES**

RICARDO P. RODRIGUEZ, JR.  
JUDGE, 12<sup>TH</sup> D.C.

RODOLFO DELGADO  
JUDGE, 13<sup>TH</sup> D.C.

J. R. "DORRY" FLORES  
JUDGE, 13<sup>TH</sup> D.C.

ROSE GUERRA REYNA  
JUDGE, 70<sup>TH</sup> D.C.

JUAN R. PARTIDA  
JUDGE, 77<sup>TH</sup> D.C.

MARIO E. RAMIREZ, JR.  
JUDGE, 113<sup>TH</sup> D.C.

NOE GONZALEZ  
JUDGE, 175<sup>TH</sup> D.C.  
OVERSEER

LETHIA LOPEZ  
JUDGE, 188<sup>TH</sup> D.C.

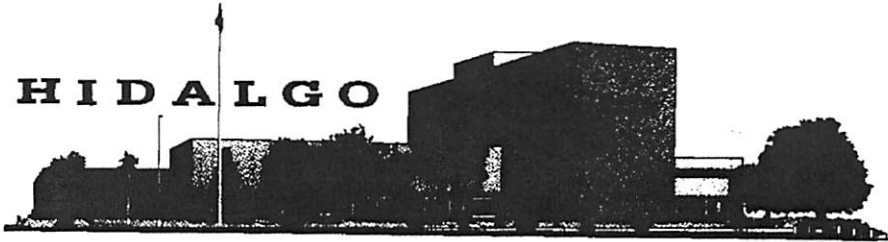
AIDA SALINAS FLORES  
JUDGE, 138<sup>TH</sup> D.C.

ISRAEL RAMON, JR.  
JUDGE, 102<sup>TH</sup> D.C.

JESSE CONTRERAS  
JUDGE, 44<sup>TH</sup> D.C.

# COUNTY of HIDALGO

HIDALGO COUNTY AUDITOR'S OFFICE  
Hidalgo County Administration Building  
2808 South Business Highway 281  
Edinburg, Texas 78539-6243  
PHONE: (956) 318-2511  
FAX: (956) 318-2577  
WEBSITE: [www.co.hidalgo.tx.us/auditor](http://www.co.hidalgo.tx.us/auditor)



EDINBURG, TEXAS 78539

October 18, 2012

The Honorable Laura Hinojosa  
Hidalgo District Clerk  
100 N. Closner, 1<sup>st</sup> Floor  
Edinburg, Texas 78539

RE: DA Bond Forfeiture Commission

Dear Ms. Hinojosa:

Texas Constitution Article XVI, section 61 provides that all district officers in the State of Texas and all county officers in the counties having a population of 20,000 or more shall be compensated on a salary basis. It further states that all fees earned by district, county, and precinct officers shall be paid into the county treasury where earned for the account of the proper fund, provided that the fees incurred by the State and county shall be paid into the county treasury when collected.

Government Code Section 41.005(b) states that the district attorney "may retain a commission from money collected for the state or a county. The amount of the commission in any case is 10 percent of the first \$1,000 collected, and five percent of the amount collected over \$1,000.00."

*Texas Practice-County and Special District Law, Administration of Justice*, further confirms that "Government Code Section 41.005 should be ignored since the county and district attorneys are compensated on a salary basis and are required under the Constitution to return unto the county any fees or such commissions collected."

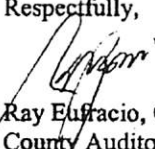
The District and County Clerk collect a commission on bond forfeitures on behalf of the District Attorney. The commission is credited to the District and County Clerk-Bond Forfeiture Accounts and the remaining bond forfeiture amount is credited to the Road and Bridge Fund.

Since the District Attorney is paid on a salary basis, the commission should not have been collected and the full bond forfeiture amount should be credited to the Road and Bridge Fund.

Please contact the Information Technology Department to deactivate the commission fee code "DAC" from our electronic receipting system. In addition, a revised Monthly Fee Report will be prepared and sent to your office.

If you should have any questions or would like to schedule a meeting to discuss this, please do not hesitate to call Yvonne Torres, Revenue Audit Supervisor, at 318-2511 ext. 4642 or me at ext. 4645.

Respectfully,

  
Ray Eufrazio, CPA  
County Auditor

Cc: The Honorable Rene Guerra, Hidalgo County Criminal District Attorney  
Valde Guerra, Commissioners Court Executive Officer  
Renan Ramirez, Chief Information Officer

Enclosures

## HIDALGO COUNTY DISTRICT JUDGES

RICARDO P. RODRIGUEZ, JR. JUDGE, 12 <sup>th</sup> D.C.	RODOLFO DELGADO JUDGE, 13 <sup>th</sup> D.C.	J. R. "BOBBY" FLORES JUDGE, 13 <sup>th</sup> D.C.	ROSE GUERRA REYNA JUDGE, 20 <sup>th</sup> D.C.	JUAN R. PARTIDA JUDGE, 17 <sup>th</sup> D.C.	MARCO E. RAMIREZ, JR. JUDGE, 12 <sup>th</sup> D.C.	HOE GONZALEZ JUDGE, 37 <sup>th</sup> D.C. OVERSEER	LETICIA LOPEZ JUDGE, 38 <sup>th</sup> D.C.	ADA BALINAS FLORES JUDGE, 36 <sup>th</sup> D.C.	ISRAEL RAMON, JR. JUDGE, 40 <sup>th</sup> D.C.	JESSE CONTRERAS JUDGE, 44 <sup>th</sup> D.C.
---	---	--	---	---	---	--	---	--	---	---

§ 41.004

PROSECUTING ATTORNEYS  
Title 2

GEN  
Ch. 4

Notes of Decisions

Compensation for nonofficial services 1  
Foreign county representation 2

his official duties and receiving compensation therefor. *Lattimore v. Tarrant County* (1910) 57 Civ.App. 610, 124 S.W. 205.

1. Compensation for nonofficial services

Rev.Civ.St.1895, art. 299 (now, this section) applied only to cases which he was required by law to prosecute, and did not prevent his employment by the county for services outside of

2. Foreign county representation

The employment of a county attorney by commissioners' court of a foreign county to represent such foreign county in collection of delinquent taxes is lawful and valid. *Op. Atty. Gen.* 1940, No. 0-2610.

→ § 41.005. Collection of Money

(a) Not later than the 30th day after the date on which a district or county attorney receives any money collected for the state or a county, the district or county attorney shall, after deducting the commissions provided by this section, pay the money into the treasury of the state or of the county to which it belongs.

(b) The district or county attorney may retain a commission from money collected for the state or a county. The amount of the commission in any one case is 10 percent of the first \$1,000 collected, and five percent of the amount collected over \$1,000.

(c) Subsections (a) and (b) of this section also apply to money realized for the state under the laws governing escheat.

(d) Not later than the last day of August of each year, each district and county attorney shall file in the office of the comptroller or of the county treasurer, as the case may be, a sworn account of all money received by him by virtue of his office during the preceding year and payable into the state or county treasury.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

Revisor's Note

→ The revised law retains the provisions of V.A.C.S. Article 335 authorizing the county or district attorney to retain commissions when he or she collects money for the state or a county. It should be noted that, for district attorneys and salaried county attorneys, the commissions are to be deposited in the county treasury under Article XVI, Section 61, of the Texas Constitution.

Historical Note

Prior Law:  
Acts 1876, p. 86.  
G.L. vol 8, p. 922.  
Rev.Civ.St.1879, arts. 255, 257.

Rev.Civ.St.1895, arts. 295, 297.  
Rev.Civ.St.1911, arts. 361, 363.  
Vernon's Ann.Civ.St. arts. 335, 337.

Cross References

Escheat in general, see V.T.C.A. Property Code, § 71.001 et seq.  
Report of money received,  
Generally, see V.T.C.A. Local Government Code, § 114.045 and Vernon's Ann.C.C.P. art. 103.005.  
Trusts, fees, see Vernon's Ann.C.C.P. art. 1023.

Auth  
Contr  
Delin  
Liqu  
Neces  
Perso  
Publ  
Quan  
Repo  
Open

1. P

The  
the c  
to th  
1895,  
office  
to ju  
befor  
Coun

Wh  
mon  
taine  
com  
com  
com  
woul  
com  
Gen.

For  
miss  
by h  
he t  
that  
in w  
prov  
quer  
he v  
0-29

2. 1

A  
cent  
reir  
satic  
caus  
mor  
han  
acti  
347

3.

A  
sior  
froi  
ford  
and  
pro  
is f

court to reduce the budget proposed by a criminal district attorney has been recognized in other cases.<sup>32</sup>

**Library References:**

C.J.S. District and Prosecuting Attorneys § 36.  
West's Key No. Digests, District and Prosecuting Attorneys ¶4.

**§ 21.11 Fees**

Aside from the hot check fees discussed elsewhere, any official statutory fees collected by a county or district attorney are generally turned over to the county depository for the proper account.<sup>1</sup> The Code of Criminal Procedure permits the assessment of a twenty-five dollar fee upon every defendant convicted of a misdemeanor or gambling offense.<sup>2</sup> A defendant placed on probation is not required to pay this special prosecutor fee.<sup>3</sup>

Prosecuting attorneys, in addition to court clerks, sheriffs, constables, and justices of the peace, are expressly authorized to collect the various fees provided for under title 2 of the Code of Criminal Procedure and pay them over to the county treasurer.<sup>4</sup>

At one time prosecuting attorneys were entitled to a ten percent commission on fines, forfeitures, and other monies collected for the state or county. This provision was repealed in 1985 view of the fact that the commission would be a fee of office ultimately going to the county or state anyway.<sup>5</sup> There is still, however, a provision entitling prosecuting

32. Randall County Commissioners Court v. Sherrod, 854 S.W.2d 914 (Tex. App.—Amarillo 1993, no writ) (reduction of total budget from \$679,000 to \$647,000, including reduction in DA supplement); Criminal District Attorney, Tyler County v. Commissioners' Court of Tyler County, 753 S.W.2d 514 (Tex.App.—Beaumont 1988, writ denied) (reduction of DA's budget by \$15,000).

**§ 21.11**

1. Vernon's Ann. Tex. Const. art. XVI, § 61. It is believed that there are no prosecuting attorneys compensated on a fee basis although this is still possible under Texas law. An earlier opinion concluded that a county attorney is not a "county law enforcement officer" under article XVI, § 61 required to be compensated on a salary basis. Op. Tex. Att'y Gen. No. V-748 (1948).

2. Vernon's Ann. C.C.P. art. 102.008 (increased from \$15 in 1989; traffic offenses are excluded; see also, Id., art. 53.03 [re-

pealed 1987]). A prosecutor pro tem is entitled to retain this fee. Id., art. 102.008(a).

3. Op. Tex. Att'y Gen. No. H-1135 (1978).

4. Vernon's Ann. C.C.P. arts. 103.003; 103.004. These fees include such assessments as witness fees, jury fees, and trial fees among others.

5. See, Id., art. 103.012, Revisor's Note; Op. Tex. Att'y Gen. Nos. V-421 (1947) (collection of conviction fee now provided by article 102.008, Code of Criminal Procedure, for D.W.I. prosecution by district attorney was in addition to ten percent commission of fine); V-64 (1947) (county attorney entitled to receive ten percent of fine in addition to ten dollar conviction fee); see generally, *Voges v. Sheppard*, 123 Tex. 96, 67 S.W.2d 856 (1934) (county attorney not entitled to fees from state for assisting district attorney in felony cases or performing district attorney's duties while absent).

Attorneys to retain  
dollars and five per  
of the state or coun  
The Code of Cr  
may collect fin  
which is subj  
these provis  
official who coll  
commissioners  
from whom, and its  
are also required to  
treasurer as the ca  
account for any mor  
minutes requiring a  
regular term of fine  
under provisions req  
the end of each  
required to make a c  
county clerk.<sup>12</sup> Yet a  
generally to keep a c  
14

The attorney ge  
reporting responsibi  
accounting of mor  
of Criminal Pro

**Library References:**  
C.J.S. District and P  
West's Key No. Dige

**§ 21.12 Fees—**  
Legislation enact  
of up to seventy-

T.C.A., Governmen  
provision is ignored si  
attorneys are compe  
and required und  
return unto the cou  
commissions collecte  
Const. art. XVI, § 61.

Vernon's Ann. C.C.P.  
Id., art. 103.011.  
Id., art. 103.012 (Clas

Id., art. 103.005. See,  
No. M-105 (1967) (cou  
ney required to submit

al district attorney has

neys 4.

elsewhere, any official attorney are generally per account.<sup>1</sup> The Code a twenty-five dollar fee or gambling offense.<sup>2</sup> ed to pay this special

clerks, sheriffs, consta-  
thorized to collect the  
of Criminal Procedure

itled to a ten percent  
as collected for the state  
view of the fact that the  
going to the county or  
on entitling prosecuting

A prosecutor pro tem is enti-  
this fee. Id., art. 102.008(a).

ix. Att'y Gen. No. H-1135

's Ann. C.C.P. arts. 103.003;  
se fees include such assess-  
ness fees, jury fees, and trial  
hers.

d., art. 103.012, Revisor's  
Tex. Att'y Gen. Nos. V-421  
ction of conviction fee now  
article 102.008, Code of Crimi-  
e, for D.W.I. prosecution by  
ney was in addition to ten  
mission of fine); V-64 (1947)  
rney entitled to receive ten  
ine in addition to ten dollar  
e); see generally, *Voges v.*  
23 Tex. 96, 67 S.W.2d 856  
y attorney not entitled to fees  
r assisting district attorney in  
or performing district attor-  
while absent).

attorneys to retain a ten percent commission on the first one thousand dollars and five percent thereafter on "any money" recovered on behalf of the state or county.<sup>6</sup>

The Code of Criminal Procedure requires any prosecuting attorney who may collect fines or fees in criminal cases to maintain a receipt book,<sup>7</sup> which is subject to examination by the county auditor.<sup>8</sup> Failure to observe these provisions is a criminal offense.<sup>9</sup> Additionally, a prosecuting official who collects money other than taxes is required to report to the commissioners court and the district court of all money received, from whom, and its disposition.<sup>10</sup> Prosecuting attorneys collecting money are also required to submit reports to the state comptroller or county treasurer as the case may be.<sup>11</sup> The duty of prosecuting attorneys to account for any money collected through its office is reiterated in other statutes requiring a "full report" to the commissioners court at every regular term of fines or judgments imposed, rendered, and collected.<sup>12</sup> Other provisions require district attorneys to report to the county clerk at the end of each district court term whereas the county attorney is required to make a comparable report at the end of every month to the county clerk.<sup>13</sup> Yet another statute requires district and county officials generally to keep a correct statement of fees, commissions, and specified sums.<sup>14</sup>

The attorney general has ruled that this hodge-podge of financial reporting responsibilities on the part of prosecuting officials necessitate an accounting of monies received under the hot check provisions of the Code of Criminal Procedure.<sup>15</sup>

#### Library References:

- C.J.S. District and Prosecuting Attorneys § 36-38.  
West's Key No. Digests, District and Prosecuting Attorneys 45(1).

### § 21.12 Fees—Hot Check Fund

Legislation enacted in 1979 permits prosecuting attorneys to collect fees of up to seventy-five dollars from persons charge with Penal Code

11. V.T.C.A., Government Code § 41.005.  
This provision is ignored since county and  
district attorneys are compensated on a sal-  
ary basis and required under the Constitu-  
tion to return unto the county any fees or  
other commissions collected. Vernon's Ann.  
Tex. Const. art. XVI, § 61.

7. Vernon's Ann. C.C.P. art. 103.010.

8. Id., art. 103.011.

9. Id., art. 103.012 (Class C misdemean-

10. Id., art. 103.005. See, *Op. Tex. Att'y*

*Gen. No. M-105 (1967) (county and district*

*attorney required to submit reports).*

11. V.T.C.A., Government Code § 41.005(d) (annual sworn account of money received required to be filed every August).

12. V.T.C.A., Local Government Code § 114.044.

13. Id., § 114.045.

14. Id., § 114.041.

15. *Op. Tex. Att'y Gen. No. MW-584 (1982).*

# COUNTY of HIDALGO



**HIDALGO COUNTY AUDITOR'S OFFICE**  
Hidalgo County Administration Building  
2808 South Business Highway 281  
Edinburg, Texas 78539-6243  
PHONE: (956) 318-2511  
FAX: (956) 318-2577  
WEBSITE: [www.co.hidalgo.tx.us/auditor](http://www.co.hidalgo.tx.us/auditor)

EDINBURG, TEXAS 78539

October 18, 2012

The Honorable Arturo Guajardo, Jr.  
Hidalgo County Clerk  
100 N. Closner, 1<sup>st</sup> Floor  
Edinburg, Texas 78539

RE: DA Bond Forfeiture Commission

Dear Mr. Guajardo:

Texas Constitution Article XVI, section 61 provides that all district officers in the State of Texas and all county officers in the counties having a population of 20,000 or more shall be compensated on a salary basis. It further states that all fees earned by district, county, and precinct officers shall be paid into the county treasury where earned for the account of the proper fund, provided that the fees incurred by the State and county shall be paid into the county treasury when collected.

Government Code Section 41.005(b) states that the district attorney "may retain a commission from money collected for the state or a county. The amount of the commission in any case is 10 percent of the first \$1,000 collected, and five percent of the amount collected over \$1,000.00."

*Texas Practice-County and Special District Law, Administration of Justice*, further confirms that "Government Code Section 41.005 should be ignored since the county and district attorneys are compensated on a salary basis and are required under the Constitution to return unto the county any fees or such commissions collected."

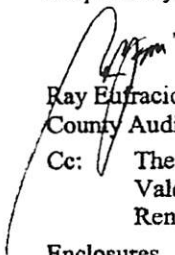
The District and County Clerk collect a commission on bond forfeitures on behalf of the District Attorney. The commission is credited to the District and County Clerk-Bond Forfeiture Accounts and the remaining bond forfeiture amount is credited to the Road and Bridge Fund.

Since the District Attorney is paid on a salary basis, the commission should not have been collected and the full bond forfeiture amount should be credited to the Road and Bridge Fund.

Please contact the Information Technology Department to deactivate the commission fee code "DA.C" from *AbleTerm*. In addition, a revised Monthly Fee Report will be prepared and sent to your office.

If you should have any questions or would like to schedule a meeting to discuss this, please do not hesitate to call Yvonne Torres, Revenue Audit Supervisor, at 318-2511 ext. 4642 or me at ext. 4645.

Respectfully,

  
Ray Eufrazio, CPA  
County Auditor

Cc: The Honorable Rene Guerra, Hidalgo County Criminal District Attorney  
Valde Guerra, Commissioners Court Executive Officer  
Renan Ramirez, Chief Information Officer

Enclosures

## HIDALGO COUNTY DISTRICT JUDGES

RICARDO P. RODRIGUEZ, JR. JUDGE, 12 <sup>th</sup> D.C.	RODOLFO DELGADO JUDGE, 15 <sup>th</sup> D.C.	J. R. "BOBBY" FLORES JUDGE, 17 <sup>th</sup> D.C.	ROSE GUERRA REYNA JUDGE, 20 <sup>th</sup> D.C.	JUAN R. PARTIDA JUDGE, 27 <sup>th</sup> D.C.	MARIO E. RAMIREZ, JR. JUDGE, 31 <sup>st</sup> D.C.	NOE GONZALEZ JUDGE, 37 <sup>th</sup> D.C. OVERSEER	LETICIA LOPEZ JUDGE, 34 <sup>th</sup> D.C.	ADA BALMAS FLORES JUDGE, 30 <sup>th</sup> D.C.	ISRAEL RAMON, JR. JUDGE, 43 <sup>rd</sup> D.C.	JESSE CONTRERAS JUDGE, 46 <sup>th</sup> D.C.
---	---	--	---	---	---	--	---	---	---	---

§ 41.004

PROSECUTING ATTORNEYS  
Title 2

GEN  
Ch. 4

Notes of Decisions

Compensation for nonofficial services 1  
Foreign county representation 2

his official duties and receiving compensation therefor. Lattimore v. Tarrant County (1910) 57 Civ.App. 610, 124 S.W. 205.

1. Compensation for nonofficial services

Rev.Civ.St.1895, art. 299 (now, this section) applied only to cases which he was required by law to prosecute, and did not prevent his employment by the county for services outside of

2. Foreign county representation

The employment of a county attorney by commissioners' court of a foreign county to represent such foreign county in collection of delinquent taxes is lawful and valid. Op.Atty. Gen.1940, No. 0-2610.

→ § 41.005. Collection of Money

(a) Not later than the 30th day after the date on which a district or county attorney receives any money collected for the state or a county, the district or county attorney shall, after deducting the commissions provided by this section, pay the money into the treasury of the state or of the county to which it belongs.

(b) The district or county attorney may retain a commission from money collected for the state or a county. The amount of the commission in any one case is 10 percent of the first \$1,000 collected, and five percent of the amount collected over \$1,000.

(c) Subsections (a) and (b) of this section also apply to money realized for the state under the laws governing escheat.

(d) Not later than the last day of August of each year, each district and county attorney shall file in the office of the comptroller or of the county treasurer, as the case may be, a sworn account of all money received by him by virtue of his office during the preceding year and payable into the state or county treasury.

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985.

Revisor's Note

→ The revised law retains the provisions of V.A.C.S. Article 335 authorizing the county or district attorney to retain commissions when he or she collects money for the state or a county. It should be noted that, for district attorneys and salaried county attorneys, the commissions are to be deposited in the county treasury under Article XVI, Section 61, of the Texas Constitution.

Historical Note

Prior Law:  
Acts 1876, p. 86.  
G.L. vol. 8, p. 922.  
Rev.Civ.St.1879, arts. 255, 257.

Rev.Civ.St.1895, arts. 295, 297.  
Rev.Civ.St.1911, arts. 361, 363.  
Vernon's Ann.Civ.St. arts. 335, 337.

Cross References

Escheat in general, see V.T.C.A. Property Code, § 71.001 et seq.  
Report of money received,  
Generally, see V.T.C.A. Local Government Code, § 114.045 and Vernon's Ann.C.C.P. art. 103.005.  
Trusts, fees, see Vernon's Ann.C.C.P. art. 1023.

Authc  
Contr  
Delin  
Liquc  
Neces  
Perso  
Publi  
Quan  
Repo  
Unen

1. P  
The  
the c  
to th  
1895,  
office  
to ju  
befor  
Coun  
Wh  
mon  
taine  
com  
com  
woul  
com  
Gen.  
Fo  
miss  
by h  
he t  
that  
in v  
prov  
quer  
he v  
0-29

2. 1  
A  
cent  
rein  
satic  
cau:  
mor  
han  
acti  
347

3.  
A  
sior  
froi  
fort  
and  
pro  
is f

court to reduce the budget proposed by a criminal district attorney has been recognized in other cases.<sup>32</sup>

**Library References:**

C.J.S. District and Prosecuting Attorneys § 36.  
West's Key No. Digests, District and Prosecuting Attorneys ¶4.

**§ 21.11 Fees**

Aside from the hot check fees discussed elsewhere, any official statutory fees collected by a county or district attorney are generally turned over to the county depository for the proper account.<sup>1</sup> The Code of Criminal Procedure permits the assessment of a twenty-five dollar fee upon every defendant convicted of a misdemeanor or gambling offense.<sup>2</sup> A defendant placed on probation is not required to pay this special prosecutor fee.<sup>3</sup>

Prosecuting attorneys, in addition to court clerks, sheriffs, constables, and justices of the peace, are expressly authorized to collect the various fees provided for under title 2 of the Code of Criminal Procedure and pay them over to the county treasurer.<sup>4</sup>

At one time prosecuting attorneys were entitled to a ten percent commission on fines, forfeitures, and other monies collected for the state or county. This provision was repealed in 1985 view of the fact that the commission would be a fee of office ultimately going to the county or state anyway.<sup>5</sup> There is still, however, a provision entitling prosecuting

32. Randall County Commissioners Court v. Sherrod, 854 S.W.2d 914 (Tex. App.—Amarillo 1993, no writ) (reduction of total budget from \$679,000 to \$647,000, including reduction in DA supplement); Criminal District Attorney, Tyler County v. Commissioners' Court of Tyler County, 753 S.W.2d 514 (Tex.App.—Beaumont 1988, writ denied) (reduction of DA's budget by \$15,000).

**§ 21.11**

1. Vernon's Ann. Tex. Const. art. XVI, § 61. It is believed that there are no prosecuting attorneys compensated on a fee basis although this is still possible under Texas law. An earlier opinion concluded that a county attorney is not a "county law enforcement officer" under article XVI, § 61 required to be compensated on a salary basis. Op. Tex. Att'y Gen. No. V-748 (1948).

2. Vernon's Ann. C.C.P. art. 102.008 (increased from \$15 in 1989; traffic offenses are excluded; see also, Id., art. 53.03 [re-

pealed 1987]). A prosecutor pro tem is entitled to retain this fee. Id., art. 102.008(a).

3. Op. Tex. Att'y Gen. No. H-1135 (1978).

4. Vernon's Ann. C.C.P. arts. 103.003; 103.004. These fees include such assessments as witness fees, jury fees, and trial fees among others.

5. See, Id., art. 103.012, Revisor's Note; Op. Tex. Att'y Gen. Nos. V-421 (1947) (collection of conviction fee now provided by article 102.008, Code of Criminal Procedure, for D.W.I. prosecution by district attorney was in addition to ten percent commission of fine); V-64 (1947) (county attorney entitled to receive ten percent of fine in addition to ten dollar conviction fee); see generally, Voges v. Sheppard, 123 Tex. 96, 67 S.W.2d 856 (1934) (county attorney not entitled to fees from state for assisting district attorney in felony cases or performing district attorney's duties while absent).

attorneys to retain...  
dollars and five per...  
the state or coun...  
The Code of Cr...  
may collect fi...  
which is subj...  
these provis...  
official who coll...  
commissioners...  
from whom, and its...  
also required to...  
treasurer as the ca...  
account for any mor...  
statutes requiring a...  
regular term of fine...  
other provisions req...  
the end of each...  
required to make a c...  
county clerk.<sup>13</sup> Yet a...  
generally to keep a c...  
times.<sup>14</sup>

The attorney ge...  
reporting responsibi...  
accounting of mor...  
of Criminal Pro...

**Library References:**  
C.J.S. District and P...  
West's Key No. Dige...

**§ 21.12 Fees—**

Legislation enacte...  
of up to seventy-...  
T.C.A., Governmen...  
provision is ignored si...  
attorneys are compe...  
and required unde...  
to return unto the cou...  
commissions collecte...  
Const. art. XVI, § 61.  
Vernon's Ann. C.C.P...  
Id., art. 103.011.  
Id., art. 103.012 (Class...  
Id., art. 103.005. See...  
No. M-105 (1967) (cou...  
ney required to submit i

al district attorney has

neys 4.

elsewhere, any official attorney are generally per account.<sup>1</sup> The Code a twenty-five dollar fee or gambling offense.<sup>2</sup> ed to pay this special

clerks, sheriffs, constab- uthorized to collect the 3 of Criminal Procedure

ttitled to a ten percent as collected for the state view of the fact that the going to the county or on entitling prosecuting

A prosecutor pro tem is enti- this fee. Id., art. 102.008(a).

x. Att'y Gen. No. H-1135

's Ann. C.C.P. arts. 103.003; se fees include such assess- ness fees, jury fees, and trial hers.

d., art. 103.012, Revisor's lex. Att'y Gen. Nos. V-421 ction of conviction fee now article 102.008, Code of Crimi- e, for D.W.I. prosecution by ney was in addition to ten mission of fine); V-64 (1947) ney entitled to receive ten ine in addition to ten dollar e); see generally, *Voges v. 23 Tex. 96, 67 S.W.2d 856* by attorney not entitled to fees r assisting district attorney in or performing district attor- while absent).

attorneys to retain a ten percent commission on the first one thousand dollars and five percent thereafter on "any money" recovered on behalf of the state or county.<sup>6</sup>

The Code of Criminal Procedure requires any prosecuting attorney who may collect fines or fees in criminal cases to maintain a receipt book,<sup>7</sup> which is subject to examination by the county auditor.<sup>8</sup> Failure to observe these provisions is a criminal offense.<sup>9</sup> Additionally, a prosecuting official who collects money other than taxes is required to report to the commissioners court and the district court of all money received, from whom, and its disposition.<sup>10</sup> Prosecuting attorneys collecting money are also required to submit reports to the state comptroller or county treasurer as the case may be.<sup>11</sup> The duty of prosecuting attorneys to account for any money collected through its office is reiterated in other statutes requiring a "full report" to the commissioners court at every regular term of fines or judgments imposed, rendered, and collected.<sup>12</sup> Other provisions require district attorneys to report to the county clerk at the end of each district court term whereas the county attorney is required to make a comparable report at the end of every month to the county clerk.<sup>13</sup> Yet another statute requires district and county officials generally to keep a correct statement of fees, commissions, and specified sums.<sup>14</sup>

The attorney general has ruled that this hodge-podge of financial reporting responsibilities on the part of prosecuting officials necessitate an accounting of monies received under the hot check provisions of the Code of Criminal Procedure.<sup>15</sup>

#### Library References:

- C.J.S. District and Prosecuting Attorneys § 36-38.  
West's Key No. Digests, District and Prosecuting Attorneys 4-5(1).

### § 21.12 Fees—Hot Check Fund

Legislation enacted in 1979 permits prosecuting attorneys to collect fees of up to seventy-five dollars from persons charge with Penal Code

V.T.C.A., Government Code § 41.005.  
This provision is ignored since county and district attorneys are compensated on a salary basis and required under the Constitution to return unto the county any fees or commissions collected. Vernon's Ann. Const. art. XVI, § 61.

7. Vernon's Ann. C.C.P. art. 103.010.  
8. Id., art. 103.011.  
9. Id., art. 103.012 (Class C misdemeanor).  
10. Id., art. 103.005. See, Op. Tex. Att'y Gen. No. M-105 (1967) (county and district attorney required to submit reports).

11. V.T.C.A., Government Code § 41.005(d) (annual sworn account of money received required to be filed every August).

12. V.T.C.A., Local Government Code § 114.044.

13. Id., § 114.045.

14. Id., § 114.041.

15. Op. Tex. Att'y Gen. No. MW-584 (1982).