
THE USE OF FEES IN
JUDICIAL AND LEGAL RECORDS ADMINISTRATION:
A SURVEY OF SELECTED STATES

69983

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

The development of the material contained in this report was funded in part by a grant from the US Department of Housing and Urban Development, administered through the Governor's Office of Budget and Planning.

Austin, Texas
July 1979

Price: \$1.50 (plus 8¢ state sales tax if applicable)

**TEXAS ADVISORY COMMISSION
ON INTERGOVERNMENTAL RELATIONS**

COMMISSION MEMBERS

**LEGISLATIVE
MEMBERS***

William P. Hobby, Lieutenant Governor
Houston

Bill Clayton, Speaker of the House of
Representatives
Springlake

Tom Creighton, State Senator
Mineral Wells

Oscar Mauzy, State Senator
Dallas

John Traeger, State Senator
Seguin

Herman Lauhoff, State Representative
Houston

Tim Von Dohlen, State Representative
Goliad

**CITY
OFFICIALS**

Steve Bartlett, City Councilman
Dallas

Lila Cockrell, Mayor
San Antonio

Mary Clair Hill, City Commissioner
Kingsville

James McConn, Mayor
Houston

**COUNTY
OFFICIALS**

Clyde C. Anderson
El Paso County Tax Assessor-Collector
El Paso

Jack A. Griesenbeck, Bastrop County Judge
Bastrop

Bob Honts, Travis County Commissioner
Austin

Jon Lindsay, Harris County Judge
Houston

**SCHOOL
OFFICIALS**

Don Rogers, Superintendent
Eanes Independent School District
Austin

Dana Williams, Superintendent
Corpus Christi Independent School District
Corpus Christi

**FEDERAL
OFFICIALS**

George C. Marks
State Resource Conservationist
US Department of Agriculture
Temple

William G. Nikolis, Director
Congressional & Intergovernmental Affairs
US Department of Energy
Dallas

**OTHER POLITICAL
SUBDIVISIONS**

David H. Brune, General Manager
Trinity River Authority of Texas
Arlington

Fred N. Pfeiffer, General Manager
San Antonio River Authority
San Antonio

**CITIZEN
MEMBERS**

Pledger B. Cate, Executive Vice-President
South Texas Chamber of Commerce
San Antonio

Jim D. Dannenbaum, President
Dannenbaum Engineering Corp.
Houston

James N. Martin
Attorney-at-Law
San Antonio

Charles Lowell Slaton
Slaton Oil Company
Quanah

Jack A. Griesenbeck, Chairman

*Vacancy

NCJRS

AUG 19 1980

ACQUISITIONS

STAFF

Jay G. Stanford, Executive Director

RESEARCH

Louise H. Winecup, Director
José Jorge Anchondo
Lynn Belton
Wayne Campbell
Mary Ellen Clifford
Paulette Coleman
John Hildreth
Cynthia P. Keever
Kathryn A. Sheppard
Sharon Stepicka
N. David Spurgin

PUBLICATIONS

Lorraine Camp, Editor
Jo Ann Seale, Supervisor
Judy Bolton
Janet Meyerdirk
Ed Piña
Margret Urias
Glenda Woolsey

ADMINISTRATION

Katherine B. Ray, Director
Betty M. Williams

FOREWORD

County governments in Texas are responsible for conducting many activities under state law. In several areas, fees set by the state provide revenues to help pay the costs counties incur in these activities. Many of these fees are charged either in connection with court-related activities or the administration of legal records.

This report describes the approaches of several other states in establishing and revising fees imposed in the judicial process and for handling and safekeeping legal records. It covers, also, state-local relationships in financing these two areas of activity. As in Texas, the legislatures in most states covered in this report establish and revise these fees, but the counties finance and administer court-related and legal records functions and budget fee revenues.

A basic reference work on county fees charged under state law in Texas has been published separately by the Commission under the title, *A History of Statutory Changes in Texas County Fees*. It includes the kinds of fees discussed in this report and others. The Commission has published, in addition, a report that identifies specific areas of activity in Texas counties where new authority to charge fees might be appropriate or was established by the 66th Legislature: *Selected Issues Pertaining to Service Fees of Texas Counties*. N. David Spurgin, Senior Research Associate on the Commission's staff, and Olive Forbes, formerly a Commission staff member and now head librarian at the Lyndon B. Johnson School of Public Affairs, prepared these reports for the Commission.

Austin, Texas
July 1979

Jack A. Griesenbeck
Chairman

CONTENTS

- I. Summary of Findings 1
- II. Survey on Judicial Fees 3
- III. Survey on Fees Related to the
Administration of Legal Records 7

I

SUMMARY OF FINDINGS

To determine whether other states have developed different policies or practices than Texas regarding fees charged by county governments in connection with the administration of courts and of legal records, two brief questionnaires were prepared and mailed to 20 states. The survey on judicial fees was sent to the office of court administration or its equivalent in each state. The survey on legal records fees was sent to the county government association in each state. The following states, the 16 largest, excluding Texas, and the 4 states surrounding Texas, comprised the survey states:

Arkansas	New Jersey
California	New Mexico
Florida	New York
Georgia	North Carolina
Illinois	Ohio
Indiana	Oklahoma
Louisiana	Pennsylvania
Massachusetts	Tennessee
Michigan	Virginia
Missouri	Wisconsin

The surveys were conducted in late May and early June of 1979. Eleven responses were received from the survey on judicial fees and six from the survey on legal records fees.

The survey on judicial fees had reference to charges made for such actions as filing a civil or criminal case; issuance of a citation, subpoena, writ, or other notice or order; and other activities related to court proceedings and legal prosecution. The legal records survey referred to those activities associated with the filing, indexing, and issuing copies of such official documents as deeds, liens, and other registered papers of business and commerce and of marriage and other licenses, permits, or certificates.

Both surveys used the term "local government" rather than "county" to allow for the fact that a municipal or other governmental unit might perform some activity, especially judicial, covered by one or more questions. In almost all instances, however, it is probably correct to interpret "local government" as referring to county government.

As in Texas, the state legislatures in most of the states responding to the surveys establish and revise both judicial fees and fees charged in the administration of legal records. Local governments in these states, particularly county governments, are responsible for financing most of the costs of court or legal records administration and receive all or a significant portion of fee revenue. Virginia is the notable exception to this pattern. There, a unified court system is wholly state-financed and judicial fees accrue to the state. In Virginia, also, fee revenue from legal records administration is used to finance this function in accordance with allocations by a special state board, and any excess revenue is divided between the state and the counties.

Fee changes have been much more frequent and extensive in the states where financing is principally a local government responsibility. Judicial fees, particularly, have been increased more often and more broadly. These fee changes are usually suggested or promoted by associations of county clerks and, in some states, by county government associations too. Generally, the states do not prepare financial reports that include these fees, and no state body makes legislative recommendations for changes in fees. The appropriateness and adequacy of the fees is usually considered by the legislature on the basis of suggestions from local officials.

New Mexico is the exception with respect to state administrative attention to judicial fees. That state, like Virginia, also has a unified court system, and the state office of court administration recommends changes in judicial fees. Interestingly, New Mexico and Virginia have had less changes in fees in recent years than other states.

Both types of fees are uniform statewide in each state. Whether the legislatures of the states could legally vary from this uniformity or delegate some fee-setting authority to local governments was not asked in the surveys. The precedent of statewide uniformity is apparently quite strong and perhaps, in the area of judicial fees, necessary in order to avoid unevenly priced justice.

It is apparent from survey responses that cost considerations have not been a matter of organized concern by most states in setting fees. This has been left to local officials, who have the responsibility for administering these activities and for supplying much of the additional funds needed to finance them.

II

SURVEY ON JUDICIAL FEES

The questions contained in Part A of the survey on judicial fees and a summary of the answers to each question is presented in the following pages. The responses summarized here are from the states of Arkansas, Georgia, Illinois, Indiana, Louisiana, Michigan, Missouri, New Mexico, Pennsylvania, Tennessee, and Virginia.

The terminology "judicial fees" may have been somewhat ambiguous to the respondents. The questionnaire explained that this term was meant to include "fees charged in connection with the use of general trial courts by litigants in civil and criminal cases." Service of process and other fee activities performed by sheriffs or constables were not clearly excluded by this wording. This possible ambiguity does not appear to have had any important effect on responses to survey questions.

An optional Part B of the survey was answered by several respondents. Part B inquired about current fee amounts both in civil and criminal cases. This report does not attempt to present a comparison of fees among responding states because of the considerable differences in the structure of fee schedules. In some states, for example, the filing fee covers all actions that may be required in a civil case. In New Mexico a \$20 filing fee includes the issuance of all citations, subpoenas, writs of execution, and other papers. In others--Louisiana, for instance--each action is separately charged: \$1 for filing the petition, \$1 for issuing a citation, \$3 for order of seizure and sale or executory process, and so forth. In criminal cases something of the same variation may be observed. In Indiana, a flat \$10 fee is charged upon conviction, plus an \$18 prosecutor's fee. In Tennessee, itemized charges ranging from 50¢ (for each defendant after the first named in an affidavit and warrant) to \$4 (for issuing copies, for example) are billed to the state for reimbursement to the county.

Overall, responses to Part B illustrate both diversity in fee structure and endurance of fee usage among the states. Although jurists and others have wished to see fee financing of courts diminished or abolished and the standards of the American Bar Association so propose, it seems unlikely to disappear soon (American Bar Association, Commission on Standards of Judicial Administration, *Standards Relating to Court Organization*, 1974). One writer on the subject has suggested, in fact, that past attitudes toward fees have turned, and that particularly in civil cases greater reliance on fee financing might be appropriate

(Phillip L. Spector, "Financing the Courts through Fees: Incentives and Equity in Civil Litigation," *Judicature*, vol. 58, no. 7 (Feb. 1975):330-339).

SURVEY RESULTS

Question 1. Who establishes and revises judicial fees applicable to trial court cases: the legislature, the highest state court, or other?

The legislature of each state establishes and revises judicial fees although in two states the highest court also exercises limited authority in this area.

Question 2. Does an official state body regularly prepare a financial report on these fees (or a report including detailed financial data on these fees)?

Six states do not prepare any report. The annual *Indiana Judicial Report* compiles basic case load and financial data for that state. New Mexico and Virginia prepare annual accounting reports on court finances, which include fee revenues.

Question 3. Does an official state body periodically recommend specific revision of judicial fees charged in trial courts?

Official recommendations by a state body are made only in New Mexico, where the administrative office of the courts performs this function.

Question 4. Are revisions of these fees frequently suggested or promoted by: association(s) of court clerks (or administrators), state bar association, local government association(s), or other?

In nine states (Arkansas, Georgia, Illinois, Indiana, Louisiana, Michigan, Missouri, Pennsylvania, and Tennessee) associations of court clerks (or administrators) usually make suggestions or promote fee revisions. In some cases local government associations also encourage changes, and in one state (Michigan) the state bar does, also. In two states (New Mexico and Virginia) no organized group sponsors fee revisions.

- Question 5. *What has been the history of fee increases since 1969 (include 1969 increases): no increases, increase in a few fees, or increase in most fees? If most fees: twice, more than twice, or do not know?*

Fees have been increased in every state. In three states, only a few fees have been raised; but in eight states, most fees have been increased. In three of these states, most fees have been raised more than twice.

- Question 6. *Are fee revenues dedicated by law to: local government, state government, financing local court costs, or other?*

In the same nine states where associations of court clerks (or administrators) encourage fee changes, revenues from fees are dedicated to financing local government or local court costs. In five of these states, some of these revenues also go to the state. All fee revenues are dedicated to the state in New Mexico and Tennessee.

- Question 7. *Who provides a majority of the financial support for trial courts: local government, state government, or other?*

In eight of the nine states listed previously, local governments provide a majority of the financial support for the courts. In the other (Louisiana), local governments provide facilities, utilities, and some equipment, and fees finance day-to-day operational costs. In New Mexico and Tennessee trial courts are entirely state-financed.

- Question 8. *Is a comprehensive financial plan that includes all trial courts in the state prepared each fiscal period?*

New Mexico, Virginia, and Michigan prepare a comprehensive financial plan; the other states do not.

- Question 9. *Does an official state body publish a guide to current fees for use by court personnel, attorneys, or the public?*

No state publishes an official fee guide.

Question 10. Please provide the title, date, and source of any recent special study of judicial fees or court financing in the state.

Massachusetts has recently published a special report on judicial fees in that state, prepared by the supreme judicial court in response to legislative action requesting the study (*Supreme Judicial Court Report to the General Court on Court Fees*, May 21, 1979). Studies are in process in Michigan, and a special study is planned in Arkansas and in Louisiana.

(In California, it should also be noted, the Legislative Analyst is currently engaged in a study of judicial fees requested by a member and officers of the Assembly Judiciary Committee.)

III

SURVEY ON FEES RELATED TO THE ADMINISTRATION OF LEGAL RECORDS

The questions contained in the survey on legal records and a summary of the answers to each of these questions is presented in this section. The responses summarized here are from the states of Arkansas, Massachusetts, New Jersey, New York, North Carolina, and Virginia.

SURVEY RESULTS

Question 1. Who establishes and revises fees charged by county clerks (registers or recorders) for filing or issuing legal records: state legislature, county governing body, or other?

The legislature establishes and revises these fees in each of the states.

Question 2. Does an official state body regularly prepare a financial report on these fees (or a report including detailed financial data on these fees)?

Arkansas and Virginia prepare such a report. In Virginia, the State Compensation Board sets the salaries and office expense budgets for the county clerks, who serve as administrators of legal records and clerks of circuit courts (and in a few counties, as clerk to the county governing body). These costs are paid from fee revenues. Any excess fees are evenly divided between the state and county general funds.

Question 3. Does an official state body periodically recommend specific revision of these fees?

No. In none of the states is the legislature presented with recommendations by an official state body.

Question 4. *Are revisions of these fees frequently suggested or promoted by: association(s) of county clerks (registers or recorders), county government association, or other?*

Fee revisions in every state are suggested or promoted by associations of county clerks (or recorders or registers) except in Arkansas, where this activity is performed by the county government association. In Virginia, the county government association also engages in this activity.

Question 5. *What has been the history of fee increases since 1969 (include 1969 increases): no increase, increase in a few fees, or increase in most fees? If most fees: once, twice, more than twice, or do not know?*

Fees have been increased in five of the six states (New Jersey is the exception). Two of these states have raised only a few fees. In North Carolina, most fees have been increased three times.

Question 6. *Are fee revenues dedicated by law to: county government, state government, financing office costs of clerks (registers or recorders), or other?*

In four of the states all fee revenues are dedicated to county governments. In one of these states (New York), the state government and town governments also receive some of the revenues from fees. In Virginia, as indicated under question 2, fee revenues are dedicated to financing the costs of clerks' offices, with any fee revenues in excess of office costs evenly divided between the state and county general funds.

Question 7. *What percentage of these fees are uniform statewide?*

Fees are uniform statewide in each state.

Question 8. *What percentage of the total cost of filing (retaining, preserving, etc.) and issuing legal records is recovered from fees statewide?*

and

Question 9. *If your answer to Question 8 is a percentage, what is the source for your answer (personal opinion, published report, etc.)?*

Two respondents indicated they did not know or have an opinion. In two states, 71 to 80 percent of costs are recovered from fees; in two others, between 91 and 100 percent, in the personal opinion of the respondents to the survey. The latter included North Carolina, where registers' offices have always been financially self-supporting according to the respondent. As previously indicated, all costs are paid from fees in Virginia.

Question 10. *How is the county clerk (register or recorder) chosen: popular election, appointment by county governing body (or executive), or other?*

In every state the county clerk (register or recorder) is chosen by popular election.

Question 11. *Does an official state body publish a guide to current fees for use by clerks (registers or recorders) or the public?*

Four states publish an official guide; two (Arkansas and Massachusetts) do not.

Question 12. *Please provide the title, date, and source of any recent special study of these fees or the financing of clerks' (registers' or recorders') offices in the state.*

The Arkansas County Clerks Association has recently been engaged in a study of this sort.

END