

AGENDA ITEM 23

Discuss and take appropriate action on the administration of the HUD Community Development Block Grant.

Commissioner Boatright addressed the Court regarding the administration of the HUD Community Development Block Grant, which HUD requires to be a function of the County government. Julie Kiley addressed the Court on the issue of grant-funded employees.

Moved: **Commissioner Boatright**

Seconded: **Commissioner Hays**

Motion: To create a position in the County Auditor's Office for a person who will oversee the HUD Community Development Block Grant and receive a salary, drawn from the grant, in an amount to be determined by the Court at a future date.

Vote: 3 – 2. **Commissioner Curlee** and **Commissioner Limmer** were opposed stating that grant funds are temporary, but such a position would be permanent.

AGENDA ITEM 24

Consider appointing a committee for hiring Public Information Officer.

The committee was described as being six people: **Commissioner Boatright**, County Tax Assessor Deborah Hunt, County Clerk Nancy Rister, County Attorney Gene Taylor, Sheriff Jim Wilson, and EMS Director John Sneed, or a person appointed to represent said officials.

AGENDA ITEM 25

Discuss and take appropriate action on the \$15 Family Protection Fee.

Kathy Wierzowiecki with the County Auditor's office and Theresa Leftwich, the executive director of the Williamson County Crisis Center addressed the Court on this issue.

Moved: **Judge Doerfler**

Seconded: **Commissioner Hays**

Motion: To approve the collection of the \$15 Family Protection Fee with no distribution of said funds, which will be held in escrow pending an opinion by the Texas Attorney General on the question of the legality of the law that authorized the fee [Tex. Gov't Code Ann. Section 51.961 (Vernon Supp. 2004)] vs. the Texas Constitution [Article 1, Section 13 (Open Courts provision)] as raised in the January 14, 2004, brief by the Harris County Attorney's office.

Vote: 3 – 2. **Commissioner Curlee** and **Commissioner Limmer** were opposed stating that pending litigation could cause an expensive return process of collected funds.

< Attachment >

Williamson County

Georgetown, Texas

DAVID U. FLORES
COUNTY AUDITOR



INTEROFFICE MEMORANDUM

Date: January 22, 2004

To: Judge Doerfler

From: Susan Weaver

Re: Family Protection Act

Cc: Dale Rye, Assistant County Attorney
Bonnie Wolbrueck, District Clerk
David Flores, County Auditor
Julie Kiley, Director of Financials
Kathy Wierzoweicki, Director of Internal Audit

I spoke with Dale Rye regarding our discussion this morning about the Family Protection Fee. He agreed that the issue should be added to the agenda so that discussion and resolution could occur. Mr. Rye also requested that I contact Bonnie Wolbrueck, District Clerk, and find out if she had heard any information from other counties and how they were handling the fee. Ms. Wolbrueck was not in today, but Melba Kemble, Chief Deputy, was informed of the situation and was going to research the issue and get back with me.

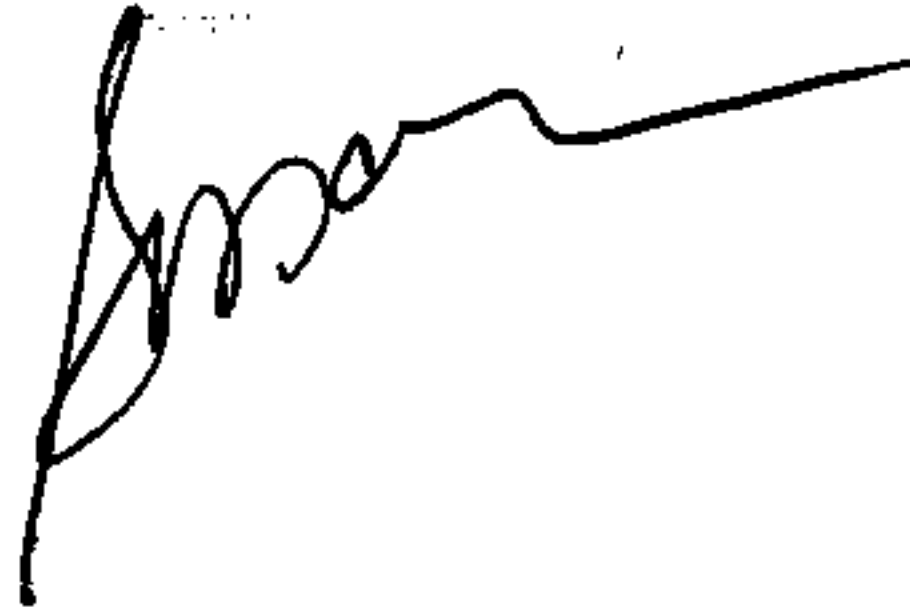
There are two basic solutions, 1) Rescind the vote to collect the fee pending the outcome of the lawsuit or 2) Continue with the collection but retain all monies collected until the lawsuit has ended. The County had this same situation with the Justice Court Technology Fee. In that scenario, the court elected to continue collecting the fee, but make no expenditures until such time as a court resolution.

I have attached the following documentation for your information and use:

1. Letter from Williamson County Crisis Center requesting the court to approve the fee
2. Copy of House Bill 2292 specifically related to the family protection bill

3. Copy of the court approval of the fee
4. Copy of the correspondence sent to the Williamson County Crisis Center with regard to the fee
5. Copy of correspondence from Dale Rye with regard to the lawsuit filed on behalf of Harris County Attorney

Once the court has reached a decision, I will make certain that the Williamson County Crisis Center is informed. Please let me know if you have any other questions or require additional information from me.

A handwritten signature in black ink, appearing to be "J. Ma", written in a cursive style.

AGENDA ITEM 34

Consider approving an additional filing fee of \$15.00 per divorce application and be allocated to the Williamson County Crisis Center.

Theresa Leftwich addressed the court in her capacity as the Executive Director of the Williamson County Crisis Center regarding House Bill 2292, which passed in the Legislature of the State of Texas on May 28, 2003. Ms. Leftwich explained that the Williamson County Crisis Center meets the criteria as set forth in that legislation, and she requested that such funds be collected for and allocated to that operation.

Moved: Commissioner Boatright

Seconded: Commissioner Limmer

Motion: To approve an additional filing fee of \$15.00 per divorce application to be allocated to the Williamson County Crisis Center.

Vote: 3 – 0. Commissioner Hays was absent from the dais.

< Attachment >

**WILLIAMSON COUNTY
CRISIS CENTER***Serving Victims of Domestic Violence and Sexual Assault*

24-Hour Hotline: 1-800-460-SAFE

October 13, 2003

Williamson County Commissioners Court
Georgetown, TX

Dear Sirs:

During the last Legislative session in Austin, House Bill 2292 passed, which included a provision for county commissioners courts to assess and collect additional fees of up to \$15 in a divorce filing. Based on current filings, these fees could total as much as \$22,000 per year in this county.

Attached is a copy of the wording, as passed unanimously by both the House & Senate.

The WCCC is the only agency in Williamson County that provides comprehensive services for families who are victims of family violence and/or sexual assault and operates a 24 hour hotline and the only emergency shelter. Shelter services are by far the most expensive to maintain.

Last year we served 2,300+ families, by providing shelter, counseling, support groups, legal advocacy and transitional housing. In addition we educated over 5,000 students and community members through classrooms, civic organizations, churches and professional trainings, such as those we provide for law enforcement and the criminal justice system. Neither of these numbers include the almost 10,000 calls we received on our hotline. Our nights of shelter provided have increased almost 40% from last year.

The Board of Directors requests that the Commissioners Court approve the additional filing fee of \$15 per divorce application through the Williamson County District Clerk's office, and that these funds be allocated to the Williamson County Crisis Center to provide services to victims of family violence.

These funds have the potential to help us serve more clients annually, as well as provide more comprehensive services to those clients.

We thank you in advance for your consideration and for your strong support of this agency over the years.

Sincerely,

Rufus L. Honeycutt
Rufus Honeycutt
Board President, WCCC

approved 10-28-03
John C. Dwyer

10/28/2003

Page 224

H.B. No. 2292

AN ACT

relating to the provision of health and human services in this state, including the powers and duties of the Health and Human Services Commission and other state agencies; providing penalties. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SUBCHAPTER M. ADDITIONAL FILING FEE FOR FAMILY PROTECTION
Sec. 51.961. FAMILY PROTECTION FEE.

- (a) The commissioners court of a county may adopt a family protection fee in an amount not to exceed \$15.
 (b) (b) Except as provided by Subsection
 (c) (c), the district clerk or county clerk shall collect the family protection fee at the time a suit for dissolution of a marriage under Chapter 6, Family Code, is filed. The fee is in addition to any other fee collected by the district clerk or county clerk.
 (d) (c) The clerk may not collect a fee under this section from a person who is protected by an order issued under:
 (1) Subtitle B, Title 4, Family Code; or
 (2) (2) Article 17.292, Code of Criminal Procedure.
 (e) The clerk shall pay a fee collected under this section to the appropriate officer of the county in which the suit is filed for deposit in the county treasury to the credit of the family protection account. The account may be used by the commissioners court of the county only to fund a service provider located in that county or an adjacent county. The commissioners court may provide funding to a nonprofit organization that provides services described by Subsection (e).
 (f) (e) A service provider who receives funds under Subsection (d) may provide family violence prevention, intervention, mental health, counseling, legal, and marriage preservation services to families that are at risk of experiencing or that have experienced family violence or the abuse or neglect of a child.
 (g) (f) In this section, "family violence" has the meaning assigned by Section 71.004, Family Code.
 (b) Subchapter M, Chapter 51, Government Code, as added by this section, applies only to a filing fee collected for a suit for the dissolution of a marriage under Chapter 6, Family Code, on or after the effective date of this section.

A filing fee collected for a suit for the dissolution of a marriage under Chapter 6, Family Code, before the effective date of this section is governed by the law as it existed immediately before the effective date of this section, and that law is continued in effect for that purpose.

President of the Senate Speaker of the House

I certify that H.B. No. 2292 was passed by the House on April 24, 2003, by the following vote: Yeas 74, Nays 31, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2292 on May 29, 2003, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2292 on June 1, 2003, by the following vote: Yeas 87, Nays 58, 1 present, not voting; and that the House adopted H.C.R. No. 305 authorizing certain corrections in H.B. No. 2292 on June 2, 2003, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 2292 was passed by the Senate, with amendments, on May 28, 2003, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2292 on June 1, 2003, by a viva-voce vote; and that the Senate adopted H.C.R. No. 305 authorizing certain corrections in H.B. No. 2292 on June 2, 2003, by a viva-voce vote.

Secretary of the Senate



RECEIVED
JAN 13 2004
OPEN RECORDS DIVISION

Mike Stafford
Harris County Attorney

January 14, 2004

RECEIVED

JAN 20 2004

OPIN. COMMITTEE

The Honorable Greg Abbott
Attorney General of Texas
Supreme Court Building
P.O. Box 12548
Austin, Texas 78711-2548

RQ-D166-GA

Certified Mail Return-Receipt Requested

FILE # ML-43433-04

I.D. # 43433

Attention: Opinion Committee

Re: Constitutionality of Family Protection Fee; C.A. File No. 03GEN2190

Ladies and Gentlemen:

Section 51.961 of the Texas Government Code, which went into effect September 1, 2003, authorizes a commissioners court to adopt a family protection fee in an amount not to exceed \$15.00. TEX. GOV'T CODE ANN. § 51.961 (Vernon Supp. 2004). We request your opinion as to whether the fee authorized under Section 51.961 of the Government Code is constitutional under the open courts provision of article 1, section 13 of the Texas Constitution. TEX. CONST. art. 1, § 13. Our Memorandum Brief is attached.

Sincerely,

MIKE STAFFORD
County Attorney

By: Marva Gay
MARVA GAY
Assistant County Attorney

Approved:

John R. Barnhill
John R. Barnhill
First Assistant County Attorney

MEMORANDUM BRIEF

Section 51.961 of the Texas Government Code, which went into effect September 1, 2003, authorizes a commissioners court to adopt a family protection fee in an amount not to exceed \$15.00 and reads as follows:

- (a) The commissioners court of a county may adopt a family protection fee in an amount not to exceed \$15.
- (b) Except as provided by Subsection (c), the district clerk or county clerk shall collect the family protection fee at the time a suit for dissolution of a marriage under Chapter 6, Family Code is filed. The fee is in addition to any other fee collected by the district clerk or county clerk.
- (c) The clerk may not collect a fee under this section from a person who is protected by an order issued under:
 - (1) Subtitle B, Title 4, Family Code; or
 - (2) Article 17.292, Code of Criminal Procedure.
- (d) The clerk shall pay a fee collected under this section to the appropriate officer of the county in which the suit is filed for deposit in the county treasury to the credit of the family protection account. The account may be used by the commissioners court of the county only to fund a service provider located in that county or an adjacent county. The commissioners court may provide funding to a nonprofit organization that provides services described by Subsection (e).
- (e) A service provider who receives funds under Subsection (d) may provide family violence prevention, intervention, mental health, counseling, legal, and marriage preservation services to families that are at risk of experiencing or that have experienced family violence or the abuse or neglect of a child.
- (f) In this section, "family violence" has the meaning assigned by Section 71.004, Family Code.

TEX. GOV'T CODE ANN. § 51.961 (Vernon Supp. 2004). [House Bill 2292, section 2.165, adopted by the 78th Texas Legislature, Regular Session.] [*Emphasis added*]. Therefore, it appears that pursuant to section 51.961 of the Government Code, a commissioners court of a county may adopt a family protection fee in an amount not to exceed \$15. The district clerk or county clerk shall collect the family protection fee at the time a suit for dissolution of a marriage under Chapter 6 of the Family Code is filed. The clerk shall pay the fee collected to the appropriate officer of the county in which the suit is filed for deposit in the county treasury to the credit of the family protection account. A service provider who receives funds generated by the family protection fee may provide family violence prevention, intervention, mental health, counseling, legal, and marriage

preservation services to families that are at risk of experiencing or that have experienced family violence or the abuse or neglect of a child.

Article 1, Section 13 of the Texas Constitution contains an open courts provision and reads as follows:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

TEX. CONST. art. 1, § 13. [*Emphasis added.*]

Texas courts have determined that the open courts provision includes three separate constitutional guarantees. First, the courts must actually be operating and available. See *Runge & Co. v. Wyatt*, 25 Tex. Supp. 294 (1860). Second, the legislature cannot impede access to courts through unreasonable financial barriers. See *LeCroy v. Hanlon*, 713 S.W.2d 335, 342 (Tex. 1986); see also, *Texas Ass'n of Business v. Air Control Board*, 852 S.W.2d 440, 448 (Tex. 1993) (holding citizens must have access to court unimpeded by unreasonable financial barriers "so that the legislature cannot impose a litigation tax in the form of increased filing fees to enhance the state's general revenue.") Third, meaningful remedies must be afforded, so the legislature may not abrogate well-established common law causes of action without a substantial interest that outweighs the litigant's constitutional right of redress. See *Sax v. Votteler*, 648 S.W.2d 661, 665-66 (Tex. 1983). These rights are substantial state constitutional rights that the legislature may not arbitrarily or unreasonably interfere with. See *Nelson v. Krusen*, 678 S.W.2d 918, 921 (Tex. 1984). The open courts test balances the legislature's purpose in enacting a law with the individual's right of access to the courts. See *Sax v. Votteler*, 648 S.W.2d 661, 666.

When considering whether the Legislature has unreasonably impeded access to the courts, which is the second open courts guarantee, it does not matter whether the claim that access is impeded arises through statute or common law. See *Central Appraisal Dist. v. Lall*, 924 SW2d 686, 689 (Tex. 1996). Texas courts have generally construed this second guarantee to prohibit filing fees that do not directly support a courthouse service. In *LeCroy v. Hanlon*, the Supreme Court held that filing fees that go to state general revenues are "in other words taxes on the right to litigate that pay for other programs besides the judiciary" and are unreasonable impositions on the right of access to the courts. See *LeCroy*, 713 S.W.2d 335, 342. The court further stated that "regardless of its size, such a fee is unconstitutional for filing fees cannot go for non-court-related purposes." *Id.* The *LeCroy* court also referenced and relied upon an Illinois case, *Crocker v. Findley*, 459 N.E.2d 1346 (1984), in which the Illinois Supreme Court declared a \$5 fee charged in divorce suits unconstitutional because the fee supported a statewide domestic violence shelter program that had no relation to judicial services rendered. The *Crocker* court held:

... court filing fees and taxes may be imposed only for purposes relating to the operation and maintenance of the courts. ...

* * * * *

... Dissolution-of-marriage petitioners should not be required, as a condition to their filing, to support a general welfare program that relates neither to their litigation nor to their court system. If the right to obtain justice freely is to be a meaningful guarantee, it must preclude the legislature from raising general revenue through charges assessed to those who would utilize our courts.

Crocker v. Finley, 459 N.E.2d 1346, 1351 (1984). In *Dallas County v. Sweitzer*, 881 S.W.2d 757 (Tex.App.—Dallas 1994, writ denied), the Dallas Court of Appeals struck down as unconstitutional a "sheriff's bailiff's" filing fee that was deposited directly into the County general fund. The court held that

... a filing fee deposited in the state's general revenue fund is an arbitrary and unreasonable interference with a litigant's right of access to the courts. It is unreasonable and arbitrary because it is a general revenue tax on the right to litigate. *LeCroy*, 713 S.W.2d at 341. The money collected can go to programs other than the judiciary. *LeCroy*, 713 S.W.2d at 341. It is immaterial that the State spends money from the general revenue fund on the judiciary. *LeCroy*, 713 S.W.2d at 342.

Dallas County v. Sweitzer, 881 S.W.2d 757, 765 (Tex.App.—Dallas 1994, writ denied). [Emphasis added]. The *Sweitzer* court held that because the fee was deposited into the county general fund and the money could be spent on other services that do not necessarily support the judiciary, the fee violated the open courts provision of the Texas Constitution. Note that although the family protection fee is to be deposited in the county treasury to the credit of the family protection account rather than into a the County general fund pursuant to section 51.961(d) of the Government Code, it appears that the funds generated by the fees may be used broadly for "family violence prevention, intervention, mental health, counseling, legal, and marriage preservation services to families that are at risk of experiencing or that have experienced family violence or the abuse or neglect of a child." See TEX. GOV'T CODE ANN. § 51.961(d) and (e) (Vernon Supp. 2004). The services listed in section 51.961(e) of the Government Code could be interpreted as services that do not necessarily support the judiciary and, therefore, may be taxes on the right to litigate that pay for programs besides the judiciary and are unreasonable impositions on the right of access to the courts.

We request your opinion as to whether the family protection fee authorized under Section 51.961 of the Government Code is constitutional under the open courts provision of article 1, section 13 of the Texas Constitution.

① Went to STATE General Revenues
3
② Illinois CASE

FAMILY PROTECTION FEE HB2212

<u>COUNTY</u>	<u>CITY</u>	<u>COLLECTING</u>	<u>NOT</u>	
BEXAR		1		
TRAVIS	AUSTIN	1		
COLLIN	PLANO	1		
FORT BEND		1		
MARION	JEFFERSON			1 NO SHELTER
SMITH	TYLER			1 NO REQUEST
TARRANT	FT WORTH			1
DALLAS	DALLAS	1		
EL PASO	EL PASO	1		
BOWIE		1		
CASS		1		
MCLENNAN				1
DENTON				1
HAYS	SAN MARCOS	1		
CALDWELL		1		
CAMERON	HARLINGEN	1		
GREGG	LONGVIEW	1		
MONTGOMERY	THE WOODLANDS	1		
EASTLAND				1
FANNIN	BONHAM	1		
FRANKLIN	MT. VERNON	1		
HENDERSON	ATHENS	1		
HARRISON	MARSHALL	1		
GUADALUPE	SEGUIN	1		
GRAYSON	SHERMAN	1		
GILLESPIE	FREDRICKSBURG			1
GALVESTON	GALVESTON			NO REQUEST
GOLIAD	GOLIAD	1		
ORANGE	ORANGE			1 PENDING COUNTY DECISION
NUECES	CORPUS CHRISTI			1
PARKER	WEATHERFORD	1		
COMAL	NEW BRAUNFEL			1 REQUESTING
TAYLOR	ABILENE			1
CALLAHAN		1		
BRAZOS				1 DIDN'T KNOW ABOUT THE LAW
MOORE	DUMAS			1
		22		13

Williamson County

Georgetown, Texas

DAVID U. FLORES
COUNTY AUDITOR

FILE
COPY



October 31, 2003

Mr. Rufus Honeycutt, Board President
Williamson County Crisis Center
211 Commerce Blvd., Suite 103
Round Rock, Texas 78664-2162

Re: New \$15 Family Protection Fee

Dear Mr. Honeycutt,

As you know, on Tuesday, October 28, 2003, our County Judge and Commissioners adopted to collect the family protection fee provided through House Bill 2292. As stated in the bill, the District Clerk will collect this fee at the time a suit for dissolution of a marriage is filed. Pursuant to Senate Bill 325, collection of this fee is not effective until January 1, 2004. Bonnie Wolbrueck, District Clerk will begin assessing the fee at that time.

Beginning on the tenth of February 2004 and every month thereafter, you will need to submit a request letter (see attached sample) for the funds to be forwarded to your organization. This correspondence should be mailed to:

Williamson County Auditors Office
710 South Main Street, Suite 303
Georgetown, Texas 78626
Attn: Julie Kiley

Please do not hesitate to contact me if you have any questions. My number is 512.943.1560 or my e-mail is sweaver@wilco.org.

Sincerely,

Susan Weaver, CGAP
Internal Auditor II

Cc: Bonnie Wolbrueck, District Clerk
Kathy Wierzoweicki, Director of Internal Audit
Julie Kiley, Director of Financials

Kathy Wierzowiecki

From: Julie Kiley
Sent: Thursday, January 22, 2004 9:22 AM
To: Kathy Wierzowiecki
Subject: FW: Danger

-----Original Message-----

From: Dale Rye [mailto:drye@wilco.org]
Sent: Thursday, January 15, 2004 9:38 AM
To: jkiley@wilco.org
Subject: Fwd: Danger

Divorce court fee on hold

Extra \$15 to offset state budget cuts
By MATT SCHWARTZ
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A new \$15 charge added to all Harris County divorce cases could face its own annulment should the Texas attorney general rule the "family protection fee" unconstitutional.

Harris County Commissioners Court unanimously approved the fee last month as a way to offset some of last summer's funding cuts by the state Legislature.

The fee, which was to be charged on all divorce or annulment cases filed in the county's family courts, was expected to raise about \$300,000 a year. Although a plan for spending the proceeds has not been approved, county officials had expected the money to help offset state budget cuts in family and youth services.

The state law authorizing such a fee also would allow counties to direct the proceeds to nonprofit agencies that provide family intervention, counseling and legal or mental health services.

But now, County Attorney Michael Stafford is questioning the legality of the fee, which he said could clash with the "open courts provision" of the Texas Constitution.

Should Attorney General Greg Abbott declare the fee unconstitutional, the impact would be felt across the state. Some other counties already have approved or made plans for similar fees, including Montgomery County's adoption of a \$5 fee in November.

Stafford said court rulings have required that all filing fees be related to services provided in or by the courts.

And although many of the services the proposed fee was intended to fund can be part of family-court cases, they are not provided by the courts themselves, Stafford said. Nor is there a guarantee that such services will be part of a particular case, even though the fee was supposed to be assessed on every divorce or annulment case filed after Jan. 2.

"This is preventive law being practiced," Stafford said Monday.

He said his office was being cautious because of experience. The county lost a 1999 lawsuit over a "bailiff fee" and had to refund the money it had collected, as well as cover the legal costs of the suit, he said.

That would not be the case locally if Abbott rules against the fee. Because of the concerns, the county has yet to collect the fee.

David W. Simpson, executive director of the county's Domestic Relations Office, said the county held off collecting the fee after Stafford's office questioned its legality about two weeks after it was approved.

Simpson said that while he understands Stafford's concerns, the loss of the fee would be disappointing.

"We had high hopes for this money," he said. "It's a hardship in the fact that the county had many funds that were removed back during the legislative session. And this fee was going to replenish some of our county services back at a level they were."

At \$300,000 a year, however, the fee could hardly be expected to put a dent in the \$69 million in state funding cuts projected for Harris County as a result of the biennial state budget adopted last summer.

Although it is unknown when Abbott may issue a ruling, Stafford said Abbott has tried to respond to such questions within six months.