

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to submit a proposed resolution for the consideration of the Texas Municipal League (“TML”) Board of Directors urging the Texas Municipal League to conduct a study regarding the negative impact of the State of Texas adding fees to municipal traffic tickets.

Dated this ____ day of August 2011.

CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

APPROVED AS TO FORM:

Richarda Duffy Momsen
City Clerk

Sylvia Borunda Firth
Senior Assistant City Attorney



M E M O R A N D U M

TO: Mayor and City Council

FROM: Sylvia Borunda Firth, Director Governmental Affairs

SUBJECT: Agenda Item - TML Resolution Municipal Fees

DATE: August 3, 2011

I have submitted a resolution for your consideration that would request the Texas Municipal League (TML) commission a study regarding the negative impact of the addition of state fees to municipal court fines. I have provided you with some back-up information to remind you of the issues that arose during the last State Legislative Session. Also attached is a memo I received from Richarda Momsen when I asked her about the potential impact on our municipal courts when fees are added. The information below is an excerpt from a periodical issued by TML January 21, 2011:

State Fees on Municipal Court Fines

Municipal courts in Texas collect funds on behalf of the state for a wide variety of state programs. These state programs range from the Criminal Justice Planning Fund to the Crime Victims' Compensation Fund. In most cases, the fees are imposed on persons convicted of any criminal offense. For these collection efforts, cities are generally allowed to keep some small amount of revenue as reimbursement for the costs incurred to collect the fees and remit them to the state.

Many city officials contend that state court costs adversely impact municipal courts in two ways. First, the state's court costs are complicated to administer. While cities can keep a small percentage of the costs as an administrative fee, that amount is not sufficient to reimburse the cities for the bookkeeping and administrative problems connected with this function. Second, when setting an appropriate fine for an offense, a judge must consider the fact that the defendant will also be paying state court costs. As a result, municipal fine revenue is often lower than it would otherwise be because the judge has considered the state court costs when setting a defendant's total fine.

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susannah M. Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Dr. Michiel R. Noe

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Cortney Carlisle Niland

City Manager
Joyce A. Wilson

OFFICE OF THE CITY ATTORNEY



Municipal court clerks also point out that the state requires that in the event of a partial payment, the state court costs must be paid first before the city can keep any of the fine. This means that cities must do all the work collecting fines but are not allowed to keep any money until the state court costs have been fully satisfied.

In recent years, the number and amount of the state fees collected by municipal courts have grown rapidly. For example, on a typical traffic offense conviction, a municipal court defendant must currently pay \$82 in state-imposed fees before any city fine is collected. The following chart is a comparison of the present situation with fees imposed just nine years ago.

	January 2002	January 2011
Crime Victim Compensation	\$15.00	\$15.00
Judicial/Court/Personnel Training	\$ 2.00	\$ 2.00
Fugitive Apprehension Fund	\$ 5.00	\$ 5.00
Consolidated Court Costs	\$17.00	\$17.00
Juvenile Crime/Delinquency (Prairie View A&M)	\$ 0.50	\$ 0.50
Correction Management Institute (Sam Houston State)	\$ 0.50	\$ 0.50
State Traffic Fine	--	\$30.00
Jury Pay	--	\$ 4.00
State Judges' Salaries	--	\$ 6.00
Indigent Defense	--	\$ 2.00
Total	\$40.00	\$82.00

In many ways, municipal court collection of state fees is similar to the state's collection of municipal sales tax. In each case, one level of government is processing a tax/fee levied by another level of government, is remitting it, and is keeping a fee for providing those services. While there are similarities, however, there are also substantial differences.

For example, the state doesn't really "collect" the municipal sales tax; it's collected by the merchant. With regard to state fees on municipal court fines, however, a municipal court employee actually collects the fees and bears the brunt of any resulting fee-payer anger.

Second, the state controls the level of the municipal sales tax, but cities certainly don't control the level of state fees on municipal fines. So while cities can't unilaterally raise the city sales tax without permission from the state, the state can (and frequently does) increase the amount of state fees that cities must collect and remit.

How much state fee/fine revenue do municipal courts collect annually?
For fiscal year 2010, the amount was just over **\$235 million**.

While cities and those who advocate for cities can provide anecdotal evidence, we were not able to provide hard facts. In preparation for the next legislative session, it would be useful to have meaningful data to present to legislators when they are considering bills which would add state fees to municipal fees.

Attachments:

Cc: Joyce A. Wilson, City Manager
Charlie McNabb, City Attorney

The Dallas Morning News

Friday, April 22, 2011

Are traffic fines a punishment or a fundraiser?

Turning police into tax collectors, says **C. Victor Lander**, is bad public policy

Let the punishment fit the crime.

That has been a basic principle of justice in nearly all legal systems dating back to ancient times. However, in recent years, the penalties for violating municipal traffic laws increasingly have more to do with the state's revenue needs than the severity of the crime.

Since 2002, the amount of fees that the Texas Legislature has added to each city or county traffic fine has more than doubled, from \$40 to \$82. This is the amount that municipal and justice courts must collect on each traffic violation and send to the state.

Now, legislators in Austin are considering two bills that together would raise the state fees on traffic violations to \$107. In many cases, that \$107 in state fees would be more than the fine assessed by the city or county.

Many drivers are shocked when

they learn they have to pay \$200 or more for what they consider to be a minor traffic infraction.

Turning law enforcement officers into tax collectors for the state is simply bad public policy on a number of levels.

First, it violates our sense of fairness about a penalty being proportionate to the offense. When legislators debate bills to raise state fees on traffic violations, the discussion is not about whether a driver who fails to signal a lane change should be fined an additional \$10 or \$15. Legislators openly admit that their intent is to raise more revenue without voting for a tax increase. They focus most of their attention on the worthy state programs that will be financed by the additional revenue, such as indigent defense or trauma care. I am not taking issue with those worthy programs. But it is unfortunate that legislators resort to bad public policy in their attempt to accomplish something good.

Second, it undermines our system of political accountability. For legislators, state fees on municipal traffic tickets translates

into a lot of free money — \$235 million in 2010. Plus the state pays nothing for the enforcement of local traffic laws. The state contributes nothing to the cost of police officer salaries, health insurance and retirement.

Legislators can avoid the negative consequences of voting for a tax increase while claiming credit for public benefits provided by the state program that is being funded. Meanwhile, irate motorists blame police officers, municipal courts and city officials for spiraling traffic fines and wonder what the city is doing with all the money it is collecting.

Finally, there is the issue of reaching a point of diminishing returns. As state fees on city traffic fines have escalated, more drivers either can't afford to pay the fines or refuse to pay. Statewide, the collection rate is about 65 percent, and in some cities, 50 percent or less. If the Legislature increases the total amount of state fees on each violation, the collection rate will most likely further decline.

Cities will have to decide whether to reduce the amount of

the fine assessed in order to keep the overall penalty proportionate to the seriousness of the offense. As the state claims a larger share of traffic ticket revenue, cities will have less to pay for law enforcement and other city services.

There are 15 million licensed drivers in Texas. There were more than 6 million traffic convictions in 2009. Some legislators say higher court fees are justifiable because violators "are not law-abiding citizens; they are criminals."

Yes, they broke a traffic law, endangering themselves and others. Every driver who pleads guilty or is found guilty in court of violating a traffic law deserves to be penalized. But Texas drivers also deserve a penalty that is based on the seriousness of the violation rather than the size of the state's budget shortfall.



C. Victor Lander is an administrative judge in Dallas Municipal Court and may be con-

tacted at victor.lander@DallasCityHall.com.

LEGISLATURE MAKING CITY TRAFFIC FINES UNAFFORDABLE AND UNCOLLECTABLE

The League issued the following press release on April 12:

AUSTIN – The Texas Legislature is considering bills to raise the amount the state adds to every municipal traffic ticket by \$25, to a total of \$107.

The State of Texas currently adds \$82 to every traffic fine collected by cities, which amounted to \$235 million in 2010. S.B. 726 by Sen. Jose Rodriguez (D-El Paso), scheduled for consideration in the Texas Senate today, would add \$10 to municipal traffic fines. In the House, H.B. 258 by Rep. Naomi Gonzalez (D-El Paso), which would add another \$15 to each ticket has been approved by the Ways and Means Committee.

“This is a deceptive way for legislators to pay for expanding state government. Legislators are turning police officers into tax collectors because they are afraid to vote for a tax increase,” said Texas Municipal League Executive Director Bennett Sandlin.

Since 2002, the state tax on every municipal traffic violation has more than doubled, rising from \$40 to \$82. Regardless of the amount a city is able to collect on a traffic violation, the state gets \$82 before the city gets any fine money.

“In a state with about 15 million licensed drivers, there are more than six million traffic tickets issued each year. The state is making minor traffic infractions unaffordable for many drivers and uncollectable for cities,” Sandlin said.

The Legislative Budget Board estimates that if S.B. 726 passes, only 65 percent of traffic fines will be paid. Some cities have seen collection rates drop below 50-percent as states fees have soared.

“When someone gets a \$250 ticket for not signaling a turn, it isn’t about crime and punishment; it’s about taxation without accountability. Legislators don’t want people to know they are raising taxes so they make cities collect it for them,” Sandlin said. “It’s time for legislators to draw the line on these out of control fees and oppose any further increases in this state money grab.”

One of the legislators mentioned in the above release was highly displeased with it, and he issued a “counter” press release. The legislator claimed to respond to “the misleading statements” made by the Texas Municipal League:

In a statement released by TML yesterday, the organization stated that if signed into law, S.B. 726 will add a \$10 fee to every traffic fine collected by cities. In fact, the fee only applies to those convicted of a traffic violation, which are generally classified as Class C level misdemeanor offenses. Pedestrian and parking violations will be exempt.

The revenue, which is expected to generate about \$77.5 million for the 2012-2013 biennium, will be used for indigent defense, which is constitutionally mandated as a part of the Fair Defense Act passed in 2001, as well as for legal aid services.

For TML to disregard the needs of veterans, victims of domestic abuse, and senior citizens is inexcusable... The Judicial Access and Improvement Account isn't paying for some new program or an expansion of government as they convey, it is providing much needed revenue for indigent defense, which is required by the constitution.

Nothing in the League’s press release appeared misleading. In fact, League staff strives to ensure that anything we print is accurate. Much of the League’s effort is spent opposing legislation that would be detrimental to cities, and that makes some legislators unhappy. But the membership has, pursuant to a comprehensive legislative policy development process, directed League staff to do just that.

The allegation that the League is disregarding the needs of veterans, victims of domestic abuse, and senior citizens, is disingenuous and patently false. As a matter of fact, we wholeheartedly believe that the Senator is doing a noble job of protecting those groups, and that there are many other worthy programs in need of funding. The issue is: how to pay for them?

Many city officials contend that state court costs adversely impact municipal courts in two ways. First, the state's court costs are complicated to administer. While cities can keep a small percentage of the costs as an administrative fee, that amount is probably not sufficient to reimburse the cities for the bookkeeping and administrative problems connected with this function. More importantly, when setting an appropriate fine for an offense, a judge must consider the fact that the defendant will also be paying state court costs. As a result, municipal fine revenue is often much lower than it would otherwise be, because the judge has considered the state court costs when setting a defendant's total fine.

The bottom line is that cities can't raise court fines fast enough to satisfy the state's ever-growing appetite for revenue, while simultaneously maintaining the amount retained by cities.

(Editor's note: Just before this edition went to print, S.B. 726 made it to the Senate floor with the bare minimum of necessary votes. Word is getting out, and city officials who are opposed to new court fees should notify their representative.)

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TEXAS HOUSE PUTS COURT FEE BILL ON THE FAST TRACK

For several weeks, city officials and municipal advocates have expected to see legislation that would raise the “state traffic fine” (a state fee imposed on certain convictions in municipal court), but no one expected what occurred on Monday, March 7.

First, some background.

In 2003, the legislature imposed a “state traffic fine” of \$30 on each traffic violation conviction. That fine, which is really nothing more than a state-imposed tax on municipal court convictions, was in addition to many other state fees that had previously been tacked onto municipal court fines. (Today, the numerous state fees imposed on traffic fines total more than \$80.)

The state traffic fine is a way for the state to raise money by relying on some other entity (in this case, local governments) to actually generate the revenue. The fee produces approximately \$90 million annually. Roughly 62 percent of the total goes to the state’s general fund, 33 percent goes to trauma centers, and five percent is kept by the cities and counties that collect the fee revenue.

Prior to the 2011 session, the Legislative Budget Board recommended a 50-percent increase in the state traffic fine: a bump from \$30 to \$45. This, of course, was an attractive option for lawmakers facing a huge budget-balancing problem.

And so it was that H.B. 258 was filed by Rep. Naomi Gonzalez (D-El Paso) on Wednesday, March 2; the bill was referred to the House Ways and Means Committee the next day. None of this came as a surprise. The surprise came two business days later (Monday, March 7) **when the House voted to suspend the posting rule and have an immediate committee hearing on H.B. 258.**

The proponents of the bill (representatives of trauma centers) had clearly been informed in advance and were present at the hearing with prepared testimony. The TML staff was, as always, monitoring House actions, had learned of the rules suspension, and rushed over to the hearing to oppose the bill.

Why would TML oppose? Again, some background.

The fiscal note on H.B. 258 indicates that the bill will generate roughly \$28.5 million in additional annual revenue for the state general fund, \$14 million for trauma centers, and \$2.4 million for local governments: the cities and counties that must impose and collect the fee.

But that fiscal note is very misleading. City officials know that as the state imposes more and more fees on municipal fines, the revenues generated *for the city* from the fines themselves will decrease. If a municipal judge normally imposes a total charge of \$250 for a traffic conviction, each dollar that goes to the state is a dollar that won’t go into municipal coffers. And as the state share goes up, the local share goes down. Thus, contrary to what the H.B. 258 fiscal note says, it is most likely that the bill will reduce municipal revenue.

That’s why city officials should have been given fair and ample notice of the committee hearing on H.B. 258. The League released the following press release on the issue on March 8, the day after the hearing:

State tax on cities is highway robbery

AUSTIN – The State of Texas takes the first \$82 from every municipal traffic fine collected by cities, which amounted to \$235 million in 2010. Monday, the House Ways and Means Committee considered a bill to increase the state’s take from every city traffic ticket, skimming off an additional \$42 million per year from city traffic fines.

H.B. 258 by Rep. Naomi Gonzalez would increase the amount the state siphons off of every municipal traffic violation by \$15 – from \$82 to \$97 – an 18-percent increase. Two-thirds of the revenue from the increase would go to the state’s general fund, and one-third would go to a fund for trauma care and emergency medical services.

“Trauma care is certainly an important and worthy service but if the state wants to increase funding for trauma care by \$14 million a year, the legislature should do what every city council has to do: cut somewhere else or vote to raise taxes,” said Texas Municipal League President Robert Cluck, Mayor of Arlington. “Taking money out of city treasuries to pay for state services is simply highway robbery that forces cities to cut services or raise property taxes.”

Since 2002, the state tax on every municipal traffic violation has risen from \$40 to \$82. Regardless of the amount a city is able to collect on a traffic violation, the state gets \$82 before the city gets any fine money.

“In defense of city taxpayers, we have to draw the line and strongly oppose any further increases in this state money grab,” Mayor Cluck said.

“It wouldn’t be so bad if the state helped pay for the cost of enforcing municipal traffic laws by providing cities with funding for police salaries, health insurance and retirement benefits or helped pay for the cost of municipal courts. But that’s never going to happen in Texas.”

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TEXAS MUNICIPAL LEAGUE NEWS RELEASE

FOR IMMEDIATE RELEASE

Tuesday, April 12, 2011

Media contact: John Bender, 512-626-5949, jsb@jsbender.com

Legislature making city traffic fines unaffordable and uncollectable

AUSTIN – The Texas Legislature is considering bills to raise the amount the state adds to every municipal traffic ticket by \$25 to a total of \$107.

The State of Texas currently adds \$82 to every traffic fine collected by cities, which amounted to \$235 million in 2010. **SB 726 by Sen. Jose Rodriguez (D-El Paso)**, scheduled for consideration in the Texas Senate today, would add \$10 to municipal traffic fines. In the House, **HB 258 by Rep. Naomi Gonzalez (D-El Paso)** which would add another \$15 to each ticket has been approved by the Ways and Means Committee.

“This is a deceptive way for legislators to pay for expanding state government. Legislators are turning police officers into tax collectors because they are afraid to vote for a tax increase,” said Texas Municipal League Executive Director Bennett Sandlin.

Since 2002, the state tax on every municipal traffic violation has more than doubled, rising from \$40 to \$82. Regardless of the amount a city is able to collect on a traffic violation, the state gets \$82 before the city gets any fine money.

“In a state with about 15 million licensed drivers, there are more than six million traffic tickets issued each year. The state is making minor traffic infractions unaffordable for many drivers and uncollectable for cities,” Sandlin said.

The Legislative Budget Board estimates that if SB 726 passes, only 65 percent of traffic fines will be paid. Some cities have seen collection rates drop below 50 percent as states fees have soared.

“When someone gets a \$250 ticket for not signaling a turn, it isn’t about crime and punishment; it’s about taxation without accountability. Legislators don’t want people to know they are raising taxes so they make cities collect it for them,” Sandlin said. “It’s time for legislators to draw the line on these out of control fees and oppose any further increases in this state money grab,”

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Sylvia,

The State Comptroller requires that we set up our cashiering system so that the first money that comes in for a fine is allocated to State court costs until they are paid in full. So if we get only a partial payment or people default on their payment plans, and they often do, the City is left holding the empty bag while the State has received their fees. The State audits all cities to make sure we prioritize their fees.

Most recently the State mandated that cities have in house collection divisions that concentrate on collecting state fees. Currently we at El Paso Municipal Court are undergoing a State audit of this function. The threat from the State is that they will revoke our 10% processing fee that we are allowed to retain for the collection of court costs if they are not satisfied with our efforts. We've had to ramp up staffing—adding City general fund positions—and procure new software such as a robo calling system and equipment for this in house division.

The State court costs have exploded in the last several years—rising increasingly—to the point where they threaten collection because they are so high. If the total amount is unreasonable, people decide they can not pay and they just take their chances of arrest. Currently we have an approximate 50% no show rate among defendants. Approx. 50% of all citations become arrest warrants. When the people are arrested, both the City and the State pay to process and house them at the jail. The judges sentence them to time served and they are released, with no money paid to the city or the state.

Our El Paso Municipal Court judges are elected and as elected officials, they are sensitive to the complaints of violators that the court costs are too onerous. So, because the judges have no control over the court costs, but they do have control over the amount of the fine, they often reduce the fine to compensate—resulting in lower revenue for the City.

The explosion in State court costs now constitutes an impediment to payment and more important, *an impediment to compliance with the laws*, especially in the poorer communities like ours where people struggle to feed, clothe and house themselves and their children. We are not Plano, Highland Park or the Woodlands. If you make it too hard for people to answer for their citations, they simply will not do it. They'd rather go to jail so their children can eat.

We should be promoting compliance, not disregard, for the law. Unrealistically high court costs undermine our efforts. They also inflate among the public an expectation of collection that can not be realized. So, citizens become frustrated by the millions of uncollected fines and fees on the books of municipalities, asking why property tax increases are being imposed on them while the fines and fees go uncollected. The stark fact is that municipal police departments do not have the resources to track down hordes of traffic scofflaws. They have other, more pressing public safety priorities, responding to crimes of a higher nature in progress. Municipalities also do not have the funds to process and house these scofflaws in the jail. Proof is that I have 282,000 active arrest warrants and *capias* arrest warrants right now that are unserved. They constitute over \$52,000,000 dollars owed to the City and the State. We are never going to see that money.

It is one thing for the State to impose higher and higher court costs, but it is the cities that are charged with the task of collection, a task that has become insupportable.

Richarda