

CHAPTER 328

S.B. No. 1385

AN ACT

relating to the disposition of money paid into the registry of certain courts in certain counties, the selection of a special depository for such funds, and the duties of the district clerk in said counties.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. This Act applies to counties having a population of 2,400,000 or more according to the most recent federal census.

SECTION 2. Notwithstanding any other provisions of the laws of the State of Texas, all money paid into the registry of any court where the district clerk is or may become responsible shall be handled by the district clerk as provided in this Act, whether said money represents funds of minors, lunatics, idiots, or non compos mentis persons, funds tendered in connection with a bill in interpleader, or any other funds.

SECTION 3. (a) Immediately after this Act becomes effective, the commissioners court of a county collecting funds described in Section 2 of this Act is hereby authorized to enter into a contract with any banking corporation, association, or individual banker in the county for the deposit of such public funds in a special account hereinafter called the "registry fund" in the named bank or banks. Notice that such contract will be made by the commissioners court shall be published by and over the name of the county judge, once each week for at least three consecutive weeks before the date on which the contract will be awarded, in a newspaper published in the county and shall be posted at the courthouse door of the county.

(b) Any banking corporation, association, or individual banker in the county desiring to be designated as special depository for the registry fund shall make and deliver to the county judge an application applying for such funds as provided in Article 2545, Revised Statutes.

(c) It shall be the duty of the commissioners court at the time and place stated in the notice to consider all applications as provided in Article 2546, Revised Statutes.

(d) Thereafter, the banking corporation, association, or individual banker selected as special depository for the registry fund shall comply with Article 2547, Revised Statutes.

(e) The provisions of Chapter 2, Title 47, Revised Statutes, where not in conflict with this Act shall apply to the registry fund. In case of any conflict between such chapter and the provisions of this Act, the provisions of this Act shall prevail.

SECTION 4. All money paid into the registry of any such court shall be deposited by the district clerk into the registry fund at the special depository bank pursuant to a judgment or order authorizing deposit which provides the beneficial owner's taxpayer identification number. The district clerk and the depository shall keep books and true records of the person or persons to whom an account is payable. The district clerk shall act only in a custodial capacity regarding the registry fund and shall not be deemed to be a trustee for the beneficial owner. The clerk shall not be deemed to have assumed the duties, obligations, or liabilities of a trustee for a beneficial owner of the registry fund of a court. The depository institution shall furnish directly to the owner named in the judgment or order authorizing the deposit an annual report of the total annual earnings of the owner's account. It shall be the duty of the beneficial owner or his next friend to comply with any applicable federal and state income tax regulations. Money shall be paid from the registry fund only upon checks or drafts signed by the district clerk upon

written order of the court with proper jurisdiction. All checks or drafts issued for the disbursement of the registry fund shall be submitted to the county auditor for his countersignature prior to delivery or payment, and the county auditor shall countersign the checks only upon written evidence of the order of the judge of the court in which the funds have been deposited, authorizing the disbursement of the funds.

SECTION 5. The interest derived from money on deposit in the registry fund shall be paid as earned as follows:

(1) A sum equal to 10 percent of the increase in such account during the current interest period shall be paid into the general fund of the county to reimburse the county for the expenses of maintaining the registry fund.

(2) The remaining 90 percent of such increase shall be credited by the special depository bank to each account therein in the proportion that each account's portion of the principal bears to the whole trust fund depository account, and the district clerk shall pay said interest together with the principal at the time the court with proper jurisdiction directs the withdrawal thereof.

SECTION 6. In addition to the regular auditing procedures of the county auditor, the registry funds shall be audited at the end of each fiscal year by an independent certified public accountant or a firm of independent certified public accountants of recognized integrity and ability. The fiscal year for said audit shall be the same as the fiscal year for the county. A written report of the audit shall be delivered to the county judge, each county commissioner, and the district clerk not later than 90 days after the close of each fiscal year, and a copy of such audit shall be kept at the office of the district clerk and shall be open to inspection by any interested person or persons during normal office hours. In addition to other statements, the audit report shall contain a notation of each owner. The cost of the audit shall be paid by the county.

SECTION 7. The district clerk, and any of his deputies authorized by the district clerk, shall give a bond in a principal amount equal to five percent of the total in the registry fund as of September 30 of the preceding year, conditioned on the faithful performance of the duties prescribed in this Act and the paying or delivering of all money coming into the clerk's hands for the registry of a court into the registry fund or to the owners thereof, and said clerk and deputies shall thereafter be liable only for gross negligence or misappropriation of funds.

SECTION 8. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision. All of the terms and provisions of this Act are to be liberally construed to effectuate the purposes, powers, rights, functions, and authorities herein set forth.

SECTION 9. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 14, 1987, by the following vote: Yeas 30, Nays 0. Passed the House on May 27, 1987, by the following vote: Yeas 147, Nays 0, one present not voting.

Approved June 11, 1987.

Effective June 11, 1987.