



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 5, 2019

Mr. Matthew S. Weingardt, C.P.A.  
Val Verde County Auditor  
901 Bedell Avenue, Suite A  
Del Rio, Texas 78840

Opinion No. KP-0263

Re: Use of pretrial intervention program funds collected under Code of Criminal Procedure article 102.0121 to supplement the salary of an attorney or staff member who assists in the administration of the program (RQ-0271-KP)

Dear Mr. Weingardt:

You ask whether a prosecuting attorney may expend pretrial intervention program funds collected under Code of Criminal Procedure article 102.0121 to supplement the salary of an attorney or staff member who assists in the administration of the program.<sup>1</sup> You also ask about the form and amount of expenditures allowed under the statute and whether they may be used for fringe benefits such as retirement and health benefits. Request Letter at 1.

Pretrial intervention is a prosecutorial practice that generally “involves a written agreement between the State and the defendant where the defendant agrees to comply with certain conditions for a specified period of time and the State agrees to dismiss the charges if the defendant successfully complies with the agreement.” *Lee v. State*, 560 S.W.3d 768, 770 (Tex. App.—Eastland 2018, pet. ref’d). The practice derives from prosecutorial discretion; statutes address only certain aspects of pretrial intervention programs, largely leaving “the organization and administration of a pretrial intervention program . . . up to the prosecutor.” *Id.* at 771; *see also* Tex. Att’y Gen. Op. No. GA-0986 (2013) at 1–3 (discussing limited legislative guidance about the program). However, statutes authorize two pretrial intervention program fees—a supervision fee and, pertinent here, “a district attorney, criminal district attorney, or county attorney administrative fee . . . not to exceed \$500.” TEX. GOV’T CODE § 103.021(22)(B) (referencing Code of Criminal Procedure article 102.0121). Article 102.0121 of the Code of Criminal Procedure governs the collection, use, and disbursement of the administrative fee:

(a) A district attorney, criminal district attorney, or county attorney may collect a fee in an amount not to exceed \$500 to be used to

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<sup>1</sup>See Letter from Mr. Matthew S. Weingardt, C.P.A., Val Verde Cty. Auditor, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Feb. 8, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

reimburse a county for expenses, including expenses of the district attorney's, criminal district attorney's, or county attorney's office, related to a defendant's participation in a pretrial intervention program offered in that county.

(b) The district attorney, criminal district attorney, or county attorney may collect the fee from any defendant who participates in a pretrial intervention program administered in any part by the attorney's office.

(c) Fees collected under this article shall be deposited in the county treasury in a special fund to be used solely to administer the pretrial intervention program. An expenditure from the fund may be made only in accordance with a budget approved by the commissioners court.

TEX. CODE CRIM. PROC. art. 102.0121; *see also* Tex. Att'y Gen. Op. No. KP-0121 (2016) at 3–4 (discussing the statutory limitation of the fee's amount and restriction on its use).

Although you ask about the prosecuting attorney's authority to expend the funds, under article 102.0121, the prosecuting attorney's only express duties are to collect the administrative fee and to deposit it in a special fund in the county treasury. TEX. CODE CRIM. PROC. art. 102.0121(a)–(c). As it is the prosecuting attorney's program, subarticle (c) suggests that the prosecuting attorney may prepare or provide information regarding the use of the fees for the budget. *See id.* § 102.0121(c). But because the commissioners court must approve the budget, the statute requires the commissioners court, not the prosecuting attorney, to ultimately decide how to expend the pretrial intervention program special fund. *See id.*; *cf. Comm'rs Ct. of Caldwell Cty. v. Crim. Dist. Att'y*, 690 S.W.2d 932, 938 (Tex. App.—Austin 1985, writ ref'd n.r.e.) (holding that while an analogous statute authorizes the prosecuting attorney to “fix” employee salaries in a proposed office budget, the commissioners court may change those salaries in the final county budget); TEX. LOC. GOV'T CODE § 111.008(a), (b) (authorizing commissioners court to make changes in the proposed county budget “it considers warranted by the law”).

Next, we consider whether the county may use the pretrial intervention fund for employee compensation. Request Letter at 1. Terms of the pertinent statutes provide general guidance for the commissioners court's decision about expenditure from the fund. First, the purpose of the fee is to reimburse the county for expenses relating to a defendant's participation in the pretrial intervention program. TEX. CODE CRIM. PROC. art. 102.0121(a). As reimbursement, the fee is not intended to be a windfall and may not be used to relieve the county of expenses of the prosecutor's office unrelated to the program. Second, the statutes characterize the fee as a prosecuting attorney “administrative fee” and require that the fund “be used *solely* to administer the pretrial intervention program.” TEX. GOV'T CODE § 103.021(22)(B); TEX. CODE CRIM. PROC. art. 102.0121(c) (emphasis added). These statutes do not define “expenses,” “administer,” or “administrative fee” for purposes of the pretrial intervention program. “Expense” commonly means “[a]n expenditure

of money, time, labor, or resources to accomplish a result.”<sup>2</sup> To “administer” commonly means “to manage the affairs of” or “to direct or superintend the execution, use, or conduct of” a particular matter.<sup>3</sup> Although you do not provide details about their work, the time and labor of the attorneys and staff of the prosecutor’s office likely represent a substantial component of the county resources expended to administer a pretrial intervention program. Thus, a court would likely conclude that compensation of the employees who administer the program is a use of the pretrial intervention fund “to administer the pretrial intervention program” and thus authorized by article 102.0121. TEX. CODE CRIM. PROC. art. 102.0121(c).

Turning to your specific questions, whether the commissioners court may use the pretrial intervention fund to provide a salary supplement or an employee benefit, or whether the statutes authorize a particular form or amount of expenditure, will depend on the specific facts and cannot be resolved by an attorney general opinion. *See* Request Letter at 1; Tex. Att’y Gen. Op. No. GA-1039 (2014) at 2. But article 102.0121 unequivocally requires that the pretrial intervention fund be used solely to administer the program and not diverted to any other use. TEX. CODE CRIM. PROC. art. 102.0121(c). Accordingly, article 102.0121 authorizes the commissioners court to use the pretrial intervention fund for an employee’s salary, salary supplement, or benefit only to the extent such use of the fund is solely for the administration of the program.<sup>4</sup>

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<sup>2</sup>BLACK’S LAW DICTIONARY 698 (10th ed. 2014); *see also* WEBSTER’S 3D NEW INT’L DICTIONARY 800 (2002) (definitions of “expense” as including “something that is expended in order to secure a benefit or bring about a result” and “the financial burden involved typically in a course of action or manner of living: COST”).

<sup>3</sup>WEBSTER’S 3D NEW INT’L DICTIONARY 27 (2002).

<sup>4</sup>Article 102.0121 does not preclude a commissioners court from considering the duties of employees of a prosecutor’s office to administer a pretrial intervention program when the commissioners court approves the employee’s compensation. Further, in preparing the budget referenced in article 102.0121(c), a prosecuting attorney could provide information correlating the employee’s time and work with the administration of the program.

S U M M A R Y

Under article 102.0121 of the Code of Criminal Procedure, the commissioners court, not the prosecuting attorney, ultimately determines the authorized uses of the county pretrial intervention program fund. The statute authorizes the commissioners court to use the pretrial intervention fund for an employee's salary, salary supplement, or a benefit only to the extent the use of the fund is solely for the administration of the program.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

KEN PAXTON  
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