



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 6, 2020

The Honorable Clint T. Griffin
Schleicher County Attorney
Post Office Box 506
Eldorado, Texas 76936

Opinion No. KP-0303

Re: Authority of a county sheriff to donate forfeiture funds under Code of Criminal Procedure article 59.06 to a nonprofit entity providing office space for mental health services, drug counseling services, and services for the victims of domestic abuse (RQ-0317-KP)

Dear Mr. Griffin:

You ask about the authority of a county sheriff to donate forfeiture funds received under Code of Criminal Procedure article 59.06 to a nonprofit entity providing office space for mental health services, drug counseling services, and services for the victims of domestic abuse.¹ You tell us the Schleicher County Sheriff's office desires to donate forfeiture proceeds to the Eldorado Service Center ("Center"). Request Letter at 1. You explain that the Center, a nonprofit organization located in the City of Eldorado in Schleicher County, provides office space to "governmental and nonprofit organizations that provide services for mental health issues, drug counseling and services for victims of domestic abuse." *Id.* You state that the sheriff's office wishes to donate a portion of forfeited funds to the Center "to assist in the maintenance and overhead associated with the operation of the building," which is the only location in the County for citizens to receive these services. *Id.*

We first examine pertinent statutory authority conveyed in article 59.06 of the Code of Criminal Procedure. Chapter 59 provides for the seizure and forfeiture of contraband and related property. TEX. CODE CRIM. PROC. arts. 59.01–.14. Article 59.06 governs the distribution of the property and proceeds from asset forfeiture. *Id.* art. 59.06. That article requires the attorney representing the state, typically a district attorney, to administer forfeited property according to the provisions of any local agreement between the attorney and law enforcement agencies. *Id.* art. 59.06(a). For purposes of article 59.06, a county sheriff is the head of a county law enforcement

¹See Letter from Honorable Clint T. Griffin, Schleicher Cty. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Dec. 5, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> ("Request Letter").

agency.² Under an agreement with the county sheriff's office, the attorney must deposit the appropriate amount of proceeds after statutory deductions in "a special fund in the county treasury . . . to be used solely for law enforcement purposes." *Id.* art. 59.06(c)(3). The article prohibits the sheriff, as the head of the law enforcement agency, from donating forfeiture proceeds or property to any entity except those specified in subsection (d-2). *Id.* art. 59.06(d-1)(2). Subsection (d-2) authorizes the county sheriff, as the head of the county law enforcement agency, to make qualifying donations:

The head of a law enforcement agency . . . may use as an official purpose of the agency . . . proceeds or property received under this chapter to make a donation to an entity that assists in:

. . .

(2) the provision of:

(A) mental health, drug, or rehabilitation services; or

(B) services for victims or witnesses of criminal offenses or instances of abuse described by Subdivision (1); or

(3) the provision of training or education related to duties or services described by Subdivision (1) or (2).

Id. art. 59.06(d-2). The statute does not define or limit the word "assists," which broadly means "to give support or aid: HELP." *See* WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 132 (2002) (defining assist). An attorney general opinion cannot definitively answer whether article 59.06 authorizes a particular expenditure because the opinion process does not resolve questions of fact. *Tex. Att'y Gen. Op. No. KP-0088* (2016) at 1, 3. However, a court would likely conclude that by providing office space to governmental and nonprofit organizations that provide services for mental health issues, drug counseling, and similar services, the Center assists with the provision of those services. And while it is ultimately a question of fact, a court would likely conclude that the services provided by these entities constitute the provision of one or more services specified in subsection (d-2). Accordingly, a court would likely conclude that article 59.06 of the Code of Criminal Procedure provides statutory authority for the sheriff of Schleicher County to donate a portion of forfeiture funds to the Center to assist in the provision of one or more of the services specified in article 59.06, subsection (d-2). *See* TEX. CODE CRIM. PROC. art. 59.06(d-2).

Next, we consider potential constitutional limitations on that authorization. Article III, subsection 52(a) of the Texas Constitution limits the Legislature's power to authorize a county "to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever." TEX. CONST. art. III, § 52(a). The provision prohibits only gratuitous grants of public

²*See also* TEX. CODE CRIM. PROC. art. 59.01(5) (defining "law enforcement agency" as including "an agency of a political subdivision of the state authorized by law to employ peace officers"); *id.* art. 2.12(1) (providing that sheriffs' deputies are peace officers); TEX. LOC. GOV'T CODE § 85.003 (authorizing sheriffs to appoint deputies).

funds to individuals, associations, or corporations. However, the expenditure of public funds for a public purpose that provides a clear public benefit in return is not an unconstitutional grant of public funds. *See Tex. Mun. League Intergov'tl Risk Pool v. Tex. Workers' Comp. Comm'n*, 74 S.W.3d 377, 383 (Tex. 2002). The Texas Supreme Court provides a three-part test to determine whether a public entity's expenditure comports with article III, subsection 52(a): (1) the expenditure's "predominant purpose is to accomplish a public purpose, not to benefit private parties"; (2) the public entity must "retain control over the funds to ensure that the public purpose is accomplished"; and (3) the public entity must receive a return benefit. *Id.* at 384.

By authorizing the sheriff to make qualifying donations, article 59.06 delegates the responsibility to the sheriff to determine in the first instance whether the donation meets constitutional requirements. *See* TEX. CODE CRIM. PROC. art. 59.06; *see, e.g.,* Tex. Att'y Gen. Op. Nos. KP-0261 (2019) at 3 (stating that commissioners court has responsibility under economic development statutes to determine whether an expenditure meets constitutional requirements); GA-0480 (2006) at 2–3 (stating that sheriff may authorize the off-duty use of a patrol vehicle only if the use complies with article III, subsection 52(a)), GA-0322 (2005) at 4 (stating that a sheriff must determine in the first instance whether the paid suspension of an employee complies with the constitutional three-prong test). Relevant to the first and third prongs of the test, the Legislature has declared that a donation conforming to article 59.06, subsection (d-2) is an official purpose of the law enforcement agency. *See* TEX. CODE CRIM. PROC. art. 59.06(d-2). With respect to the second prong, the sheriff may maintain sufficient control over the funds by, for example, conditioning the donation on the use of the funds for the statutorily recognized purposes. Thus, a court would likely find that the sheriff of Schleicher County may donate civil forfeiture funds to a nonprofit entity providing office space to entities providing one or more of the services specified in article 59.06, subdivision (d-2) of the Code of Criminal Procedure provided the sheriff determines that the expenditure is statutorily authorized and comports with the three-part test under article III, subsection 52(a) of the Texas Constitution.

S U M M A R Y

Article 59.06, subdivision (d-2) of the Code of Criminal Procedure authorizes a county sheriff to donate a portion of forfeiture funds to an entity that assists in the provision of services specified in the article. Pursuant to article III, subsection 52(a) of the Constitution, a donation or other expenditure must satisfy a three-part test: (1) the predominant purpose of the expenditure is to serve a public purpose, (2) the expenditure includes sufficient controls to ensure that the public purpose is carried out, and (3) the public entity receives return benefit. A court would likely find that the sheriff of Schleicher County may donate civil forfeiture funds to a nonprofit entity providing office space to entities providing one or more of the services specified in article 59.06, subdivision (d-2) of the Code of Criminal Procedure provided the sheriff determines that the expenditure is statutorily authorized and comports with the three-part test under article III, subsection 52(a) of the Texas Constitution.

Very truly yours,

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

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