



RQ-0034-GA

Ted G. Walker
Criminal District Attorney
Jasper County, Texas

March 17, 2003

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MAR 28 2003

OPINION COMMITTEE

Texas Attorney General
Opinion Committee
P. O. Box 12458
Austin, Texas 78711-2458

FILE # ML-43041-03
I.D. # 43041

RE: Special Investigation Fund

Dear Sir or Madam:

FACTS: Some years ago, the Jasper County Criminal District Attorney's Office initiated a policy with District Court approval through which certain drug offenders who were put on probation (now "community supervision") were required to make a payment that was then divided between the Criminal District Attorney's Office and a now-defunct interlocal drug crime task force. As I understand it, the purpose was to impose additional sanctions on those probationers as a means to further rehabilitation. The funds were divided, and used to fund various functions and expenditures relating to both the Criminal District Attorney's Office and the now-defunct task force.

QUESTIONS: Can a court impose, as a condition of community supervision, a requirement that a probationer placed on community supervision for a drug offense pay a "flat-rate" fee into a "special investigation fund" or such other fund designated by the court, with the proceeds divided and used by prosecutors and law enforcement agencies? If so, can any probationer be required to pay such a fee? If so, are there limitations on how the money must be spent? And must any money that goes to county departments, such as the District Attorney's Office or Sheriff's Office, go through the County Auditor's Office and be disbursed through the County Treasurer's Office?

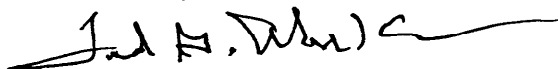
LAW: I am aware of some opinions from your office relating to somewhat similar issues, e.g., Letter Opinion 94-083; JM-853; JM-307. I am also aware of Article 42.12, §11(b), Code of Criminal Procedure, which provides, in part:

“A judge may not order a defendant to make any payments as a term or condition of community supervision, except for fines, court costs, restitution to the victim, and other conditions related personally to the rehabilitation of the defendant or otherwise expressly authorized by law.”

Clearly, the “special investigation fund” “fee” or “donation” is not an authorized fine for the offense, nor is it court costs, or restitution to a victim. I know of no express authorization by law for such a “fee” or “donation,” though there may be provisions of which I am unaware. Apparently, the original justification for the “fee” or “donation” was the “other conditions related personally to the rehabilitation of the defendant” portion of the statute. And that seems to be the only realistic authorization for the payment. Thus, the question is whether a required payment by a probationer is a condition “related personally to the rehabilitation of the” probationer.

Please issue an opinion regarding this matter at your earliest convenience. Your help and guidance is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Ted G. Walker", with a long horizontal flourish extending to the right.

Ted G. Walker
Criminal District Attorney