

Office of County Auditor

Guadalupe County, Texas

Kristen Klein, CPA
Guadalupe County Auditor

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MAY 27 2003

OPINION COMMITTEE

May 22, 2003

FILE # ML-43097-03
I.D. # 43111

Ms. Nancy S. Fuller, Chair
Opinion Committee
Office of the Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

RQ-0058-GA

Re: Collection of Certain Fees
Ref: ID#43097

Dear Ms. Fuller:

In order to clarify my request and comply with the protocols of your office, I am respectfully submitting the attached request for an opinion to the Attorney Generals Office because I disagree with the advice and counsel of my county attorney.

Thank you for your help with this matter.

Respectfully submitted,



Kristen Klein, CPA
Guadalupe County Auditor

attachments

Office of County Auditor

Guadalupe County, Texas

**Kristen Klein, CPA
Guadalupe County Auditor**

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May 11, 2003

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MAY 14 2003
OPINION COMMITTEE

Opinion Committee
Office of the Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

FILE # ML-43097-03
I.D. # 43097

Re: Collection of Certain Fees

Dear Sir or Madam:

Under Section 402.042 of the Texas Government Code, I would like to request an Attorney General's Opinion regarding the collection of fees by the Guadalupe County Community Supervision and Corrections Department (CSCD). This question has been posed to the County Attorney for Guadalupe County and their answer is attached.

The Guadalupe County Attorney's Office has been very helpful with all legal questions. However, because the collection of this fee has a serious impact on the fiscal position of the Guadalupe County Community Supervision and Corrections Department (CSCD), as a matter of public policy, your ability to render an opinion and determine legislative intent, this question is being sent to you for your consideration.

FACTS

Section 102.012 of Vernon's Texas Code of Criminal Procedures allows for a person who is under a pre-trial intervention program (established under Section 76.011 Pretrial Services, Vernon's Texas Government Code), to be assessed a fee not to exceed \$500.

Section 76.015 of Vernon's Texas Government Code, allows a Community Corrections and Supervision Department to assess a reasonable administrative fee of not less than \$25 or more than \$40 per month on an individual who participates in a department program or receives department services and who is not paying a monthly fee under Section 19, Article 42.12 Code of Criminal Procedures.

Question:

Can a person who, under a pretrial intervention program (established under Section 76.011, Government Code), is assessed a fee not to exceed \$500 (established under Section 102.012, Code of Criminal Procedures) also be assessed a reasonable administrative fee of not less than \$25 and not more than \$40 per month (established under Section 76.015, Vernon's Texas Government Code)?

I have contacted Rene Henry at the Office of Court Administration. He could not find any specific information that would prevent the CSCD from collecting both of these fees. However, he did recommend that we receive a legal opinion to clarify this matter.

Thank you for your help with this matter. Please do not hesitate to contact me if I can clarify any of the above issues or be of assistance.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kristen Klein". The signature is fluid and cursive, with a large initial "K" and a long, sweeping underline.

Kristen Klein, CPA
Guadalupe County Auditor

ELIZABETH MURRAY-KOLB
GUADALUPE COUNTY ATTORNEY
KIMBERLY DE LA GARZA
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February 26, 2003

Ms. Kristen Klein
County Auditor
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Seguin, Texas 78155
Via Fax: (830) 303-1541

COPY

RECEIVED
GUADALUPE COUNTY
AUDITOR'S OFFICE
03 FEB 27 AM 10:30

RE: Collection of Certain Fees

Dear Ms. Klein,

In response to your letter dated December 17, 2002, this office has researched the issue presented therein and submits the following for your review.

I have reviewed the statutory references in your letter. There is no case law interpreting said statutes so any analysis must depend on standard statutory rules of construction. One of the most basic rules of construction is that a specific statute will always control over a more general statute. Section 76.015 of the Government Code states, in part (a), that "A department may collect money from an individual as ordered by a court..." In the case of pre-trial diversion, there is no court order for same. The defendant signs a contract and a docket entry is made reflecting the person's presence in the program, but there is never a "Court Order". Part (c) of that same Government Code section does allow for an administrative fee if the person is not paying a monthly fee pursuant to the Code of Criminal Procedure. Since a person on Pre-Trial Diversion is not paying a monthly fee pursuant to the CCP, perhaps an argument could be made that an administrative fee would be allowed.

However, Art. 102.012 of the Code of Criminal Procedure specifically discusses fees that can be charged to a person enrolled in the Pre-Trial Diversion program and, moreover, caps that fee at \$500.00. Unlike the more general statute (i.e. Section 76.015, Govt.Code), this statute is specific with respect to fees relative to the Pre-Trial Diversion program. The far stronger argument therefore is that the fees allowed by Section 76.015 are inapplicable and therefore could not be collected. Logic would also dictate that this statute controls in that the Legislature had to devise a plan to compensate a Probation Office supervising a person on Pre-Trial Diversion since no court order was in place to set fees.

I hope this answers your question

Sincerely,

Robert E. Etlinger