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JUN 23 2017
OPINION COMMITTEE



RQ-0166-KP

FILE # M1-48164-17
I.D. # 48164

COOKE COUNTY AUDITOR
COOKE COUNTY COURTHOUSE
101 S. DIXON STREET
GAINESVILLE, TEXAS 76240
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June 23, 2017

Attorney General Ken Paxton
P.O. Box 12548
Austin, TX 78711-2548

Re: Request for Attorney General Opinion

Dear General Paxton:

Pursuant to 402.042 and 402.043 of the Texas Government Code, I respectfully request your formal written opinion on the following question:

May a private attorney who has contracted with Cooke County under 103.0031 of the Code of Criminal Procedure collect delinquent restitution that while collected by the County is not owed directly to the County?

I am also providing supporting information which includes a background and related opinion from the Texas Attorney General applicable statutes and documentation.

BACKGROUND

Cooke County has contracted with a private collection attorney pursuant to 103.0031 of the Texas Code of Criminal Procedure. That Provision reads:

(a) The commissioner's court of a county or the governing body of a municipality may enter into a contract with a private attorney or a public or private vendor for the provision of collection services for one or more of the following items:

(1) debts and accounts receivable such as unpaid fines, fees, court costs, forfeited bonds, and restitution ordered paid by:

(A) a court serving the county or a court serving the municipality, as applicable;

Tex. Crim. Proc. Code Ann. art. 103.0031.

That provision specially allows the collection vendor to add a collection fee to the amount owed. Based on language from your office, there is an apparent question as to what type of restitution may be collected under 103.0031.

The county does not question that it can collect any restitution owed to the county itself; the plain language of the statute makes that clear. However, the County does question whether the collection vendor can collect any restitution that is collected by the county but not directly owed to the county.

Cooke County attempts to collect court ordered restitution on behalf of crime victims. For example, an intoxicated driver damages the property of a homeowner. Pursuant to a court order, this intoxicated driver is ordered to make restitution to the victim. If this restitution is not paid, we currently have limited collection options. The question at hand is whether we could turn this case over to our collection firm, pursuant to Section 103.0031 for collections.

ATTORNEY GENERAL OPINION KP-0019

In AG Opinion KP-0019, the Atascosa County Attorney presented your office with a question concerning the nature of restitution and whether it was "owed to the county". It is language contained in that opinion that raises the question presented in this request. KP-0019 Reads in part:

Restitution is a statutory right of a crime victim, serving in part to "restor[e] the victim to the status quo and forc[e] an offender to address and remedy the specific harm that he has caused." *Hanna v. State*, 426 S.W.3d 87, 91 (Tex. Crim. App. 2014). The Court of Criminal Appeals has acknowledged that, in enacting the restitution statute at issue, "[t]he legislature intended restitution to adequately compensate the victim of the offense in the course of punishing the criminal offender." *Id.* (quotation marks omitted). Consistent with this purpose, the specific language of article 42.037 of the Code of Criminal Procedure directs that restitution payments are to be made "to the victim," either directly or by way of transfer, suggesting that the money is never meant for use by the county.² TEX. CODE CRIM. PROC. ANN. art. 42.037(a), (g)(4) (West Supp. 2014). Therefore, a court would likely conclude that restitution funds ordered in a criminal judgment by a statutory county court and collected by the county clerk pursuant to article 42.037 of the Code of Criminal Procedure are not funds "belonging to the county" required to be deposited with the county treasurer or in the county treasury pursuant to section 113.021 of the Local Government Code.

This opinion makes the distinction that restitution owed to a crime victim does not belong to the County. As such, Cooke County seeks an opinion as to whether it can contract with a private collection vendor to collection restitution amounts that are not owed to the County.

We anxiously anticipate a response to our questions. On Behalf of Cooke County, thank you for your time and assistance in this matter.

Sincerely,

A handwritten signature in black ink, reading "Shelly Atteberry". The signature is written in a cursive, flowing style.

Shelly Atteberry

Cooke County Auditor