

Val Verde County



901 Bedell Ave., Ste. A  
Del Rio, TX 78840

Matthew S. Weingardt, CPA  
County Auditor

Phone: 830-774-7584  
Fax: 830-775-9198

RQ-0271-KP

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Via E-mail  
Office of the Attorney General  
Attention Opinion Committee  
P.O. Box 12548  
[Opinion.committee@oag.texas.gov](mailto:Opinion.committee@oag.texas.gov)

FILE # ML-48496-19  
I.D. # 48496

RE: Request for Opinion Regarding Section 102.0121 of Code of Criminal Procedure.

Dear General Paxton,

I respectfully ask for you to offer your opinion and interpretation pursuant to article 102.0121 of the Code of Criminal Procedure.

- Can a prosecuting attorney expend funds from the Code of Criminal Procedure article 102.0121, pretrial intervention program, to supplement assistant prosecuting attorney's or other staff member's salary who assist in the administration of the defendant's participation in the program?
- What form of salary expenditure calculation is prudent, rational or preferred?
- Would program revenues also be allowed to fund fringe benefits to include retirement and health benefits attached to the salary supplemental?

It is understood that if program revenues are allowed to be used, it would have to be in accordance with a budget approved by Commissioners Court.

#### Background

Prosecuting attorney contends that article 102.0121 of the Code of Criminal Procedure pretrial funds may not be used to supplement assistant prosecuting attorney's or other staff member's salaries in relation to time spent facilitating the program, but agrees that they can be used to facilitate indirect and direct expenditures explicitly stated in AG Opinion no. GA-1039 "refurbish courthouse facilities, train staff and purchase office supplies".

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**Known Legal Authorities**

**Pursuant to article 102.0121 (a), (c) of the Code of Criminal Procedure**

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

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.

**Pursuant to Texas Attorney General Opinion No. GA-0118 Item IV**

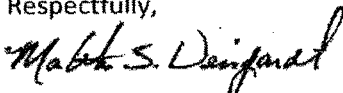
Thus, records management and preservation fees may be used to pay only that portion of an employee's salary that is proportional to the amount of time the employee spends on "specific records management and preservation, including automation purposes." TEX. LOC. GOV'T CODE ANN. 5 118.0216(d) (Vernon Supp. 2003).

**Pursuant to Texas Attorney General Opinion No. JC-0397 Summary**

A district attorney may not require the county commissioner's court to expend county funds to pay the employer's share of employment taxes on the assistant district attorney salary supplements paid from the district attorney's "hot-check fund" and from monies the district attorney receives from the state under section 46.004 of the Government Code.

Please advise if you require any additional information or clarification from my office in order to properly evaluate this request and issue your opinion. Thank you for your time and attention on this matter.

Respectfully,



Matthew S. Weingardt, CPA  
Val Verde County Auditor