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OPINION COMMITTEE

RQ-0437-JC

FILE # ML-421100-01

I.D. # 421100

September 18, 2001

Honorable John Cornyn  
Attorney General of Texas  
P.O. Box 12548  
Austin, Texas 78711-2548

Dear General Cornyn:

I am requesting an opinion and your guidance on the following questions:

- 1)Based on the facts described below, what do you recommend the County Attorney's office do with money that remains in a pre-trial diversion fund set up by a previous county attorney?
- 2)In the event your response is the money collected shall be returned to those who contributed to the account, what shall be done if we cannot locate complete records indicating who has paid into the account. Without complete records, the possibility exists there will be unidentifiable funds remaining in the account.
- 3)Finally, what shall be done with any interest that has accrued on the account.

The facts are as follows:

The previous county attorney implemented a program through which she would allow certain individuals charged with misdemeanor crimes to enter into a pre-trial diversion agreement in return for not prosecuting a case.. Rather than filing a case with the county clerk, the county attorney would place the individual on a "probation" monitored solely out of her office.

The agreement would require the individual to pay a pre-trial diversion fee. The fees collected were deposited into a "pretrial account" set up by the prior county attorney. To date, this account has a balance of \$26,470.60.

As the newly elected county attorney, I no longer allow individuals to enter into pre-trial agreements. However, money collected by the previous county attorney is still sitting in a bank account and must be dispersed to the appropriate party or parties.

Texas Attorney General Opinion JC-0042 (1999) held that a prosecutor lacks authority to receive and allocate a sum of money in accordance with a pre-trial agreement. Texas Attorney General Opinion JC-0119 (1999) re-iterated this point by stating that a county attorney's office may not receive funds from offenders in accordance with a pre-trial diversion agreement.

In light of these opinions it seems the money currently sitting in the "pre-trial account" may have been collected inappropriately. Consequently, I am at a loss as where to forward the benefits of this fund.

Your consideration and opinion in this matter is greatly appreciated.

Sincerely,

  
Dustanna Rabe  
Hopkins County Attorney