

County of Jim Wells



JESUSA SANCHEZ-VERA
COUNTY ATTORNEY

(361) 668-5700

200 NORTH ALMOND
P. O. DRAWER 2080
ALICE, TEXAS 78333

RECEIVED

JUL 19 2007

July 17, 2007

FILE # ML-45271-07

I.D. # 45271

OPINION COMMITTEE

CMRRR#7003 2260 0002 1689 2185

The Honorable Greg Abbott
Attorney General for the State of Texas
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0604-GA

RE: Request for Attorney General Opinion - Fee Modification
in lieu of community service

Dear Attorney General Abbott:

Our office has received a request from our 79th Judicial District Court regarding an Attorney General Opinion.

The Jim Wells Community Supervision and Corrections Department has requested that the 79th District Judge allow for a modification of the conditions of probation to permit certain qualified probationers to pay a set fee per hour (suggested minimum wage of \$5.15) for community service hours not performed. We are seeking an Attorney General Opinion regarding a legal analysis as to the permissibility of a fee payment in lieu of community service hours which were not performed.

Attached for your review is the request forwarded to our office which outlines the relevant criminal procedure statute.

Very truly yours,
COUNTY ATTORNEY
JIM WELLS COUNTY, TEXAS

Jesusa Sanchez-Vera
Jesusa Sanchez-Vera
County Attorney



**79TH JUDICIAL DISTRICT COURT
JIM WELLS & BROOKS COUNTIES**

200 N. ALMOND ST.
P. O. BOX 1375 • ALICE, TEXAS 78333
(361) 668-5718 • FAX (361) 668-8240

RICHARD C. TERRELL
PRESIDING JUDGE

CAROL SALINAS
COURT MANAGER

May 22, 2007

Via Facsimile

Jesusa Sanchez-Vera
Jim Wells County Attorney
200 N. Almond St.
Alice, TX 78332

Re: Payment to Community Service Restitution Program in lieu of CSR
performance

Dear Ms. Sanchez-Vera:

I have recently received a request from the Jim Wells County Community Supervision and Corrections Department to allow for the modification of the conditions of probation to permit certain qualified probationers to pay a set fee per hour (suggested minimum wage of \$5.15) for community service hours not performed. At times, the performance of community service hours can create an economic hardship on probationers that may result in the loss of valued employment. Attached is a copy of an August 14, 1996 letter opinion written by Todd Jermstad, Assistant General Counsel, Texas Department of Criminal Justice - Community Justice Assistance Division concerning this issue. It is also my understanding that this practice is widespread in this State.

I asked the District Attorney to research this request and I have also researched this matter myself. Neither I nor the District Attorney's office could locate any legal authority that would permit this Court to allow such a payment. Additionally, attorney Jermstad's concerns outlined in his letter opinion are certainly noteworthy.

Sections 11 and 16 of Texas Code of Criminal Procedure Article 42.12 mandate the performance of community service as a condition of probation. Section 16(a) provides the only exceptions to this rule that I could locate if the judge determines and notes on the order placing the defendant on community supervision that:

- (1) the defendant is physically or mentally incapable of participating in the project;

- (2) participating in the project will work a hardship on the defendant or the defendant's dependents;
- (3) the defendant is to be confined in a substance abuse punishment facility as a condition of community supervision; or
- (4) there is other good cause.

In my opinion, the provisions of Article 42.12, Sections 11(a)(10) and 16 are mandatory and cannot be excused unless the exceptions and procedures of Section 16(a) are satisfied. The Section 16(a) exceptions do not contain any provision for the payment of a fee in lieu of community service. Although a judge has broad authority in establishing the terms and conditions of probation, I have serious concerns about the existence of legal authority that would to allow the payment of a fee in lieu of community service.

I am respectfully requesting that you seek an Attorney General Opinion concerning the legality of this practice.

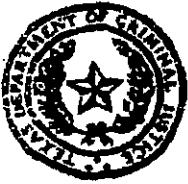
Best regards,



Richard C. Terrell
District Judge

attach.

cc: Thomas Turner
1st Assistant District Attorney, via facsimile #(361)668-9974
Dalia Garcia, Adult Probation, via facsimile #(361)668-8681



**TEXAS DEPARTMENT OF CRIMINAL JUSTICE
COMMUNITY JUSTICE ASSISTANCE DIVISION**

Susan Cranford
Division Director

August 14, 1996

The Honorable Vince Slominski
Colorado County Judge
P.O. Box 236
Columbus, Texas 78934

Dear Judge Slominski:

This is in response to your letter dated August 7, 1996. In your letter you posed a question pertaining to community service. In particular you asked "if the defendant is given the choice to perform CSR or pay it out at a rate of \$5.00 an hour, could this money be placed in an account to be used to help the county hire extra office help or on an as needed basis?" Having reviewed this matter I can find no law that specifically prohibits the substitution of money for hours of community service.

The statutes authorizing a court to order a defendant to perform community service do not specifically mention whether a court can require or allow a defendant to pay cash in lieu of performing a certain number of hours of community service. Because of the absence of any express language permitting a court to substitute money for hours of community service, I have been reluctant to sanction this practice. Nevertheless I recognize that many courts utilize this method for discharging the community service obligation imposed under the law.

The Community Justice Assistance Division (CJAD) has taken the position that the preferred concept of community service is that the offender return hours of service to the community instead of money. Moreover the CJAD has had some concern that allowing certain offenders to pay to satisfy their community service obligation may result in disparate punishment between those who can afford to pay for the substitution of community service hours and those who cannot. Nevertheless the CJAD understands that the law does not expressly forbid this practice. Consequently the CJAD will not question this method provided that the court's order clearly states that a defendant may substitute money for hours of service performed. Moreover the purpose for which these monies are used will not be questioned provided that the court clearly designates the account into which the monies are to be deposited and the monies are used for county or community supervision and corrections department purposes.

I hope this letter adequately addresses your question. If I can be of any further service to you please feel free to contact me.

Sincerely yours,

Todd Jermstad
Assistant General Counsel

TJ/sg