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OPINION COMMITTEE



The Office of Vince Ryan
County Attorney

FILE # ML-46157-09
I.D. # 46157

August 25, 2009

Certified Mail, Return Receipt Requested

The Honorable Greg Abbott
Attorney General of Texas
Supreme Court Building
P. O. Box 12548
Austin, Texas 78711-2548

RQ-0819-GA

Attention: Opinion Committee

Re: Whether the district clerk is authorized to accept an assignment of the defendant's cash bail bond refund in payment of the defendant's fines and costs; *C. A. File No. 09GEN0265*

Dear General Abbott:

We request your opinion as to whether the district clerk is authorized to accept an assignment of the defendant's cash bail bond refund in payment of the defendant's fines and costs.

If the district clerk may do so, at what point in the process may the district clerk accept an assignment of the cash bail bond refund from the defendant? For instance:

- (1) May the district clerk accept an assignment from the defendant at the time the defendant makes the cash deposit, with the assignment being effective after adjudication?
- (2) May the district clerk accept an assignment from the defendant after the defendant's adjudication?
- (3) May the district clerk accept an assignment if the order of the court directs the refund to the defendant?

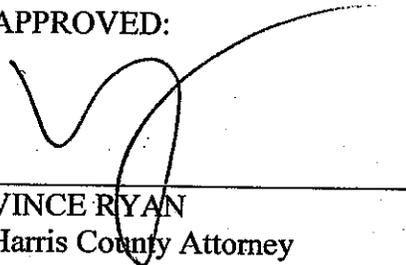
Our memorandum brief is attached.

Sincerely,

VINCE RYAN
County Attorney

By 
M. SCOTT BRESK
Senior Assistant County Attorney

APPROVED:



VINCE RYAN
Harris County Attorney

VR:MSB
Attachment

MEMORANDUM BRIEF

After receiving requests from defendants in criminal cases to use their cash bail bond refunds to pay fines and costs, the Harris County District Clerk inquired whether he is legally authorized to accept assignments of the defendants' cash bail bond refunds in payment of their fines and costs. Although no statute expressly or impliedly authorizes the district clerk to do so, under the general laws of assignments, an owner of a right or interest may voluntarily transfer that right or interest to another.

Article 17.02 of the Texas Code of Criminal Procedure defines a bail bond and allows a defendant to deposit cash with the court in lieu of having sureties sign a bond in order to secure the defendant's appearance in court as follows:

A 'bail bond' is a written undertaking entered into by the defendant and his sureties for the appearance of the principal therein before some court or magistrate to answer a criminal accusation; provided, however, that the defendant upon execution of such bail bond may deposit with the custodian of funds of the court in which the prosecution is pending current money of the United States in the amount of the bond in lieu of having sureties signing the same. Any cash funds deposited under this Article shall be receipted for by the officer receiving the same and shall be refunded to the defendant if and when the defendant complies with the conditions of his bond, and upon order of the court.

TEX. CODE CRIM. PROC. ANN. art. 17.02 (Vernon 2005) [*emphasis added*]. "The prime object or purpose of bail is to secure the presence of an accused upon trial of an accusation against him. It is not a revenue measure intended to be a substitution for a fine, but is intended to secure the trial of the alleged offender rather than turn his securities or those of his bondsman into a penalty." *McConathy v. State*, 528 S.W.2d 594 (Tex. Crim. App. 1975) [*emphasis added*]; *See Grantham v. State*, 408 S.W.2d 235 (Tex. Crim. App. 1966); *Trammel v. State*, 529 S.W.2d 528 (Tex. Crim. App. 1975). If the defendant has complied with the conditions of the bond, "the court's duty to refund the cash deposits is a ministerial one." *De Leon v. Pennington*, 759 S.W.2d 201 (Tex. App.—San Antonio 1988, no writ) [*emphasis added*]. "Words and phrases shall be read in context," and unless they "have acquired a technical or particular meaning" shall be given their common, everyday meaning. TEX. GOV'T CODE ANN. § 311.011 (Vernon 2005). The word "shall" imposes a duty." TEX. GOV'T CODE ANN. § 311.016 (Vernon 2005). By its plain meaning, "article 17.02 prohibits a court from withholding a cash bail bond refund from a defendant who owes fines to the court if the defendant has otherwise complied with the conditions of the bond and is due a refund." Op. Tex. Att'y Gen. No. JC-0024 (1999). In other words, "when the defendant has complied with the conditions of his bond and is due a cash refund, a court officer may not withhold the refund until the defendant's fines are paid." *Id.* [*emphasis added*]. But, the "district clerk may, pursuant to section 117.055 of the Local Government Code, withhold an administrative fee from the return of funds deposited with the clerk as a cash bail bond pursuant to article 17.02 of the Code of Criminal Procedure." Op. Tex.

Att'y Gen. No. JC-0163 (1999); See TEX. LOC. GOV'T CODE ANN. § 117.055 (Vernon 2008); Op. Tex. Att'y Gen. No. GA-0436 (2006).

Just as article 17.02 of the Texas Code of Criminal Procedure and section 117.055 of the Texas Local Government Code address the disposition of a cash bond deposited with the district clerk to secure the defendant's appearance, so other articles in the Texas Code of Criminal Procedure address the collection of fines and costs. For instance, under article 43.07 of the Texas Code of Criminal Procedure, "an execution may issue for the fines and costs," and "the execution shall be collected and returned as in civil actions." Also, under article 43.03 of the Texas Code of Criminal Procedure, ~~if "the defendant defaults in payment, the court after a hearing ... may order the defendant confined in jail until" the fines and costs are discharged.~~ In addition, under article 43.09 of the Texas Code of Criminal Procedure, the court may order the defendant to participate in an "approved work program" or to perform "community service" until such time as the fines and costs are discharged. Further, under article 43.091 of the Texas Code of Criminal Procedure, the court may waive payment if "the defendant is indigent" and "the method of discharging the fine or cost ... would impose an undue hardship on the defendant." See TEX. CODE CRIM. PROC. ANN. arts. 43.03, 43.07, 43.09, 43.091 (Vernon Supp. 2008).

Based on the statutory procedure created by the Texas Legislature, after the defendant, or someone on the defendant's behalf, deposits cash with the district clerk to secure the defendant's appearance in court, the district clerk must issue a receipt in the name of the defendant, and if the defendant complies with the conditions of the bond, and the order of the court directs a refund to the defendant, the district clerk must pay the refund to the defendant. Pursuant to section 117.055 of the Texas Local Government Code, the district clerk may withhold an administrative fee from the refund. Various statutes set out the procedures by which the fines and costs are to be collected, however, none, either expressly or impliedly, authorize the district clerk to accept an assignment of the defendant's cash bail bond refund.

However, the right to a refund is a property right which may be assigned. See 7 TEX. JUR. 3D *Assignments* §§ 1, 15 (2006). If the defendant voluntarily assigns the refund to the district clerk after the defendant complies with the terms of the bond and the case is adjudicated, the refund is not being withheld from the defendant by either the court or the district clerk. Also, if the defendant voluntarily assigns the refund to the district clerk after being adjudicated, the purpose of the cash bail bond in securing the defendant's presence upon trial is met. In addition, if the court orders the refund to the defendant, the defendant, as owner of the right to the refund, may assign the refund to the district clerk. *Id.*

Summary

Although we found no statute that expressly authorizes the district clerk to accept an assignment of a defendant's cash bail bond refund in payment of the defendant's fines and costs, the general laws of assignments authorize the defendant to do so after he has successfully complied with the terms of the bond and the case is adjudicated.