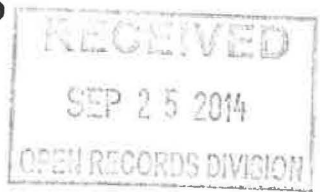


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OPINION COMMITTEE

September 22, 2014

Abelino "Abel" Reyna
Criminal District Attorney

Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Via *Certified Mail RRR*

Re: Section 61.003, *Government Code*-Jury Reimbursement Donations

Request: Does the 2007 amendment to Section 61.003 (a) (4) of the *Government Code* operate to restrict the "other" county programs allowed to be considered by jurors for donation of jury reimbursements to juror counseling programs?

Dear Attorney General Abbott:

Section 61.003 of the *Government Code* identifies the categories of programs to which a county may allow jurors to donate juror reimbursements. Section 61.003 (a) (4), *Government Code* now reads:

(4) any other program approved by the commissioners court of the county, including a program established under Article 56.04(f), Code of Criminal Procedure, that offers psychological counseling to jurors in criminal cases involving graphic evidence or testimony.

The underlined language was added by the 80th Legislature in 2007 by S.B. 560. Before that the statute had always read: "any other program approved by the commissioners court of the county."

Initially, the text itself is oddly constructed in that it is unclear whether "that offers psychological counseling to jurors in criminal cases involving graphic evidence or testimony" is descriptive of "including a program established under Article 56.04(f), Code of Criminal Procedure" or is a modification of "any other program approved by the commissioners court of the county." If one were to give full deference to the commas—the amendment could be interpreted as modifying "any other program approved by the commissioners court of the county" so that the only "other" programs allowed would have to relate to juror counseling. However, the retention of "any other program approved by the commissioners court of the county" would tend to indicate that such was not the intended result in that if such were the intent it would likely be more accurately reflected by the language used.

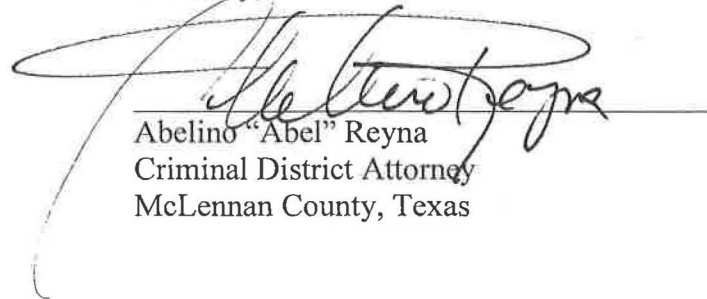
Whether or not a statute is ambiguous on its face, certain matters may be taken into consideration by a court in construing the statute, including legislative history. *See* Section 311.023 (3), *Government Code*. The legislative history of S.B. 560 indicates that the underlined language was not contained in either the introduced or engrossed versions of the bill. The language first appears in the enrolled version of the bill. The enrolled bill summary provides in relevant part:

Senate Bill 560 amends the Code of Criminal Procedure to provide for a program of posttrial psychological counseling for a person who serves as a juror or an alternate juror in the trial of a criminal offense involving graphic evidence or testimony and who requests the counseling by a certain deadline. The bill amends the Government Code to permit each person who reports for jury service to opt to donate and designate a specific amount of the person's daily reimbursement to a program that offers psychological counseling to jurors in criminal cases involving graphic evidence or testimony.

See Enrolled Bill Summary, S.B. 560, 80th Legis. (R). The summary indicates that the bill was intended to “permit” jurors to donate their juror reimbursement to juror counseling programs. The language appears to have been added to accommodate the enactment of Article 56.04(f), Code of Criminal Procedure. It would be difficult to garner from the summary the intent to change to the provision to make juror counseling the only “other” program that can be considered. This is especially true given that such would be a significant change in the law; yet there is no mention of an intent to restrict the types of “other” programs or to enact a substantive change other than to permit donation to a juror counseling program.

Your guidance on this issue is respectfully requested.

Sincerely,



Abelino "Abel" Reyna
Criminal District Attorney
McLennan County, Texas