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OPINION COMMITTEE



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I.D. # 47869

RQ-0075-KP

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November 17, 2015

Honorable Ken Paxton
Office of the Attorney General
Attention: Opinion Committee
Via: Opinion.committee@texasattorneygeneral.gov

Re: Request for an opinion regarding the authority of the Victoria County Criminal District Attorney to expend forfeiture funds to pay a consultant to investigate the operations of the Victoria County Regional Juvenile Detention Center.

Dear General Paxton:

On behalf of the Chairman and several members of the Victoria County Juvenile Board, I respectfully request your opinion on the following matter.

Question Presented:

May the Victoria County Criminal District Attorney expend forfeiture funds to hire and pay a consultant to investigate the operations of the Victoria County Regional Juvenile Detention Center?

Discussion:

In September, 2015, the Victoria County Criminal District Attorney, Hon. Stephen B. Tyler, entered into a "Consulting Agreement" with a consulting firm. A partial copy of the agreement is attached hereto. Mr. Tyler has refused to release the entire agreement to the public, including the part of the agreement that describes the "Scope of Work." A local newspaper (The Victoria Advocate) has made an open records request for the entire agreement. In turn, Mr. Tyler is seeking an opinion from your office to prevent the release of the entire agreement (see his letter to the Open Records Division attached hereto).

Even though the "scope of work" of the consulting firm is not publically known, the Victoria County Juvenile Services department has received an extensive list of questions from the firm. Attached is a partial listing of those inquiries. Clearly, the consulting firm

is investigating the financial operations of the Victoria County Regional Juvenile Detention Center.

As shown in the consulting agreement (page one), Mr. Tyler has agreed to pay the firm \$135,000 in 3 installments of \$45,000 each. The source of the funds is his forfeiture fund account (see Commissioners Court budget workshop minutes attached hereto).

As you are aware, Chapter 59 of the Code of Criminal Procedures (CCP) relates to the forfeiture of "contraband," defined as property used in the commission of certain criminal offenses. See Tex. Code. Crim. Proc. Ann. Ch. 59 (Vernon 2006 & Supp. 2007). Forfeited property is in general "administered by the attorney representing the state, acting as the agent of the state, in accordance with accepted accounting practices and with the provisions of any local agreements entered into between the attorney representing the state and law enforcement agencies." Id. Art. 59.06(a) (Vernon Supp. 2007). The Victoria County Criminal District Attorney is an attorney representing the state within this provision. The question, quite simply, is whether Mr. Tyler can utilize these forfeiture funds to pay the consultant and whether such an expenditure is authorized under CCP Art. 59.06(c)(1) which requires these funds "*to be used by the attorney solely for the official purposes of his office.*"

Your office addressed a similar question in GA-0613. There, the Harris County District Attorney was proposing to use funds forfeited to his office to purchase a juvenile detention center. The opinion held that such an expenditure is not for the "official purposes" of the district attorney's office. The opinion further stated that there was "no provision expressly authorizing the Harris County District Attorney to provide for a juvenile detention facility." Finally, the opinion concludes that the "Harris County District Attorney may not use asset forfeiture funds to help purchase or lease a juvenile detention facility for the county."

It would seem, therefore, that if a district attorney cannot use these funds to purchase or lease a juvenile detention facility, then a district attorney cannot spend forfeiture moneys to study the viability of an existing juvenile detention facility. Your office has repeatedly held that the juvenile board of a county is a "specialized local entity" vested with general management and financial control regarding a juvenile probation department, juvenile detention department or juvenile detention facility. The Commissioners Court's power of review is limited to a review of the amount of county funds in that department's budget on an abuse of discretion standard. JC-0085, GA-1085 & GA-1069. Again, it would appear that the legislative scheme would certainly allow for a juvenile board to hire a consultant to study the operations of a juvenile detention facility. It is not clear whether a district attorney can use forfeiture funds for such a purpose.

Your attention and consideration of this question is greatly appreciated.

Sincerely,



Judy McAdams, CPA
Victoria County Auditor