RQ-0111-KP
FILE # ML-48025-16
I.D. # 48025

Jennifer D. Robison, CPA
Brown County Auditor

200 South Broadway
Brownwood, TX 76801
325-646-0328

Josie Contreras
Assistant County Auditor

June 14, 2016

The Honorable Ken Paxton
Attorney General of Texas
Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Sent Certified Mail, Return Receipt Requested
Receipt No. **7008 1830 0000 8961 8838**

And via email to Opinion.Committee@texasattorneygeneral.gov

RE: 1. Whether the Brown County Attorney under *Section 45.125 of the Texas Government Code* can lawfully agree with defendants in misdemeanor criminal cases to refrain from prosecuting a violation of law if the alleged offender agrees to "donate" or otherwise pay money to the Brown County Attorney as part of pretrial diversion agreements with his office.

2. Whether a judge can legally order defendants in misdemeanor criminal cases to make "donations" to the Brown County Attorney as a part of a pretrial diversion agreement with his office.

3. Whether such pretrial diversion "donations" or payments otherwise received can be lawfully transferred from the Brown County Attorney's donation fund at the County Attorney's request and with the approval of the Brown County Commissioners Court to be comingled with money in the County Attorney's hot check fund in order to supplement staff salaries of the County Attorney's office.

4. Whether a criminal defendant in a misdemeanor case can be legally required to pay a pretrial diversion fee to the Brown County Clerk or the Brown County Attorney as a part of a pretrial diversion agreement with the Brown County Attorney; if (1) it is not ordered by a court, and (2) if it is not related to reimbursing the county for any expense related to the defendant's participation in a pretrial intervention program, or

(3) as a community supervision fee allowed under *Article 102.012 of the Texas Code of Criminal Procedure*.

Dear General Paxton,

Opening Statement

I understand a county attorney's constitutional and statutory duty to prosecute criminal cases in his or her county traditionally provides the prosecutor broad discretion to determine whether or not to prosecute an offense. I am sure that pretrial diversion programs in many misdemeanor cases (when done according to the law and when properly administered) can be a good thing for all concerned. Rehabilitation can take place without punishment that is overly harsh. Both society as a whole, the counties involved, and the individual defendant can benefit in these instances. Fines and fees have been required to be paid by defendants for legitimate purposes as authorized by law ever since we have had a criminal justice system.

However, requiring criminal defendants to pay required monies to a prosecuting attorney's office in exchange for more lenient treatment or dismissal of their cases under the guise of calling these payments "donations", appears to me to create a major problem. There is an obvious potential for abusing the practice of exacting a "donation" or other payment which directly or indirectly benefits the very prosecuting attorney who is the one requiring it be paid in the first place; especially if there can be serious consequences to the accused person responsible for paying it if he or she does not do so.

I believe that a true donation is a gift: a voluntary act of transferring property or money to another without compensation or expectation of getting something in return. I don't think a donation is *quid pro quo:* something that is ordered, or required by another with power over a person in exchange for dismissal, or more lenient treatment of one's criminal case. Yet, I am not a lawyer. Brown County and its citizens need your opinion on the matters set out above for the reasons I will now describe below.

Relevant Background Facts

Effective June 15, 2007, the Texas Legislature enacted *Section 45.125 of the Texas Government Code*, which states as follows:

> "The county attorney of Brown County or the Commissioners Court of Brown County may accept gifts or grants from any individual, partnership, corporation, trust, foundation, association, or governmental entity for the purpose of financing or assisting the operation of the office of county attorney in Brown County. The county attorney shall account for and report to the county auditor all gifts and grants accepted under this section."

In the 80th Legislative Session, H.B. 1930 by Representative Jim Keffer was presented to the County Affairs of the Texas House of Representatives for a public hearing on March 21, 2007. This bill was ultimately enacted into law as *Section 45.125 of the Texas Government Code* referenced above. Near the end of the public hearing, then Assistant Brown County Attorney Ryan Locker presented the proposal for this legislation on behalf of Brown County Attorney Shane Britton. The presentation is available to view at www.house.state.tx.us/video-audio/committee-broadcasts/80/. The Author's/Sponsor's Statement of Intent and the Bill Analysis for this legislation is available at Senate Research Center 80R4774 KFF-D. A copy of the letter from Shane Britton, Brown County Attorney to the Texas Legislature which proposed the above referenced legislation is attached as **Exhibit 1** to this letter. Attached as **Exhibit 2** is the Notice of Intent to Introduce the Legislation Concerning the Brown County Attorney's Office.

I was recently appointed as the Brown County Auditor, effective June 1, 2016. 35th Judicial District Judge Stephen Ellis appointed me after he demanded the resignation of the previous Brown County Auditor, Nina Cox on May 18, 2016 following his investigation into allegations concerning her job performance pursuant to *Section 84.009(a) of the Texas Local Government Code.* Judge Ellis has shared with me a portion of his findings incidental to his investigation.

It is my understanding that the Brown County Attorney is the chief prosecuting attorney for the County Court and the County Court at Law. He is also the chief legal advisor to the county. The County Attorney generally handles requests for legal opinions from the Attorney General's Office. However, the matters I am addressing center around the County Attorney. It is incumbent on me to request this opinion since I have the authority and responsibility to do so. I have become aware of some events that give me great concern and I need an Attorney General's Opinion to answer the questions I have posed. The public has a right to expect sound financial management from county officials and employees. Therefore, I must do my job and request this Opinion from you.

The Brown County Attorney has been utilizing pretrial diversion agreements with defendants for many years. From at least March 2003 until June 2007, the Brown County Attorney Shane Britton was preparing and presenting a Pretrial Diversion Order to then Brown County Court at Law Judge Frank E. Griffin. A sampling of these pretrial diversion orders from various cases are attached collectively as **Exhibit 3**. During this time, Judge Griffin ordered as a part of pretrial diversion orders defendants to pay a pretrial diversion fee of varying amounts to the Brown County Clerk, which was deposited into the general fund.

After the above referenced legislation concerning Brown County became law in 2007, the Brown County Attorney began to utilize it to require donations to be paid to his office as a part of pretrial diversion agreements with misdemeanor criminal defendants. In exchange for favorable disposition of their cases normally through a pretrial diversion agreement (called the Brown County Misdemeanor First Time Offenders Program), the Brown County Attorney appears to require as a *quid pro quo* the alleged offender to contribute to the

prosecutor's donation fund, claiming it is authorized because of the above referenced legislation. Attached as **Exhibit 4** are copies of some of the Pretrial Diversion Agreements utilized during this period.

During the budget process, on or before September 8, 2008, Brown County Attorney Shane Britton presented to the Commissioners Court of Brown County his proposal that the county attorney would pay more of his staff salaries out of the county attorney hot check fund instead of it coming out of the county's general fund as had previously been the case. It was part of an overall plan so that he could personally be given a raise of approximately $15,000 per year out of the general fund, since it would not increase the total amount expended from the Brown County general fund for his office. The commissioners court agreed with his proposal. The problem became that the county attorney hot check fund did not have as much money in it as it had in the past and it was inadequate to fund the balance of the staff salaries that Mr. Britton agreed to pay out of the hot check fund. To remedy this problem, he requested and the commissioners court approved that each month money be transferred from the county attorney donation fund to the hot check fund in order for the staff salaries to be paid out of that hot check fund. For a period of years, the county auditor would transfer the funds on a monthly basis to accomplish the meeting of payroll in the county attorney's office. It is my opinion that the amount of the annual amount of shortfall in the county attorney's hot check fund is approximately $15,000.

The previous auditor, Ms. Nina Cox agreed to transfer monies from the county attorney donation fund to the county attorney hot check fund because of her being convinced by the County Attorney that *Section 45.125 of the Texas Government Code* authorized him to use the donation account for the purpose of financing or assisting the operation of his office. It is my understanding that the county attorney has absolute discretion on how to use the funds in the hot check account, with the exception that they cannot be used to supplement his own salary. Therefore, any monies transferred into the hot check account from the donation account are no longer under the control of the commissioners court and funds from this account are now being mixed with other funds in the hot check account.

It is my understanding, that Ms. Cox refused Mr. Britton's additional request to transfer funds from the county attorney pretrial diversion fund to the hot check fund because *Article 102.0121 of the Texas Code of Criminal Procedure*, concerning pretrial diversion funds, required those funds to be used only for reimbursing costs associated with the administering of the pretrial diversion program.

In September 2009, *Article 102.0121 of the Texas Code of Criminal Procedure* was amended to allow a prosecuting attorney to collect up to a $500 fee to be used to reimburse a county for expenses including expenses of the prosecutor's office related to a defendant's participation in a pretrial intervention program offered in that county. These fees collected under that article were required to be deposited in the county treasury in a special fund to be used solely to administer the pretrial intervention program, with expenditures from the fund being made only in accordance with a budget approved by the

commissioners court. It does not appear to me that these fees in this particular account represented any reimbursement of costs associated with the administering of the pretrial diversion program. I believe those funds have been allowed to collect as they are paid and never spent for anything. Currently there is an ending balance in this pretrial diversion fund in April 2016 of $96,347.94 as per **Exhibit 5**. As you will see in **Exhibit 5** there is also a current balance in the county attorney hot check fund of only $820.85. The county attorney seizure fund has a balance of $31,404.87 and the county attorney donation fund has a balance of $41,985.41.

On or about November 12, 2009, Judge Griffin wrote a letter to County Attorney Shane Britton concerning collection of pretrial diversion fees because of complaints he had received from Mr. Joe Cooksey. A copy of this letter was forwarded to County Auditor Nina Cox and County Judge Ray West, attached as **Exhibit 6.**

On March 8, 2011, previous Brown County Auditor Nina Cox prepared a letter which she furnished to Brown County Court at Law Judge Frank Griffin concerning the history of the pretrial diversion funds and how they had been deposited and collected in the general fund of Brown County, but held under different line items for the Brown County Court, Judge E. Ray West III presiding and the Brown County Court at Law, Judge Frank Griffin presiding. A copy of this letter with one enclosure is attached as **Exhibit 7**.

On October 25, 2011, Brown County Court at Law Judge Frank Griffin met with the previous county auditor and the county clerk concerning the collection fees for pretrial diversion. A copy of his letter is attached as **Exhibit 8**. From that time on, it appears that Judge Frank Griffin was so concerned about the legality of these matters that he stated he did not intend to sign any more orders. However, I did see that he signed a Pretrial Diversion Order on April 12, 2012 in the case of the State of Texas vs. John Newton case number 1200129, a copy of which is attached as **Exhibit 9.**

On March 17, 2014 the *pro se* defendant in the State of Texas vs. Samuel Ethan Essary in case number 1400086 in the Brown County Court at Law met with the Brown County Attorney regarding his pending charge of Possession of Marihuana of two ounces or less, a Class B Misdemeanor. On November 17, 2014 Judge Frank Griffin called the case and wrote on the docket sheet that the Pretrial Diversion Agreement did not comply with the statute and he did not approve it. A copy of the docket sheet and the Pretrial Diversion Order, which Judge Griffin refused to sign, are attached collectively as **Exhibit 10**.

Once the County Court at Law Judge refused to sign the orders for pretrial diversion, County Clerk Sharon Ferguson refused to accept the payments to her office. The County Attorney then began handling the bulk of the cases with pretrial diversion agreements essentially without an order from the Judge of the Brown County Court at Law. He would enter into agreements such as the two attached as **Exhibits 11 and 12** and have the money be collected by the Brown County Community Supervision and Corrections Department and distributed from there, even though there was no court order requiring the defendant to participate.

Judge Sam C. Moss was elected as the Brown County Court at Law in November of 2014 and took office on January 1, 2015. Judge Moss did not sign any orders regarding pretrial diversions other than orders which essentially recognized the fact the County Attorney had entered into a Pretrial Diversion Agreement with a Defendant and retained the case on the court's docket pending the defendant completing the Pretrial Diversion Agreement. If the defendant failed to do so, then the case could go forward. If the Pretrial Diversion Agreement had been complied with, then the case would have been dismissed. It is my understanding that sometimes the county attorney would agree to waive the balance of some monies owed by defendants in these instances.

On August 3, 2014 there was a charge of Theft, a Class B Misdemeanor filed by the Brown County Attorney against Ms. Bianca Gloria. The original charge in the Brown County Court had been a Class B Misdemeanor of Shoplifting, filed August 3, 2014. In December 2014, this charge was dismissed by the Brown County Attorney pursuant to a plea bargain agreement. A new charge was filed December 16, 2014 for Theft- less than $20.00. The defendant entered a plea of "No Contest" and was fined $150.00. The Defendant requested Deferred Adjudication for which the fine increased to $250.00, ordered to be paid by January 15, 2015. The Justice Court had no further contact with the Defendant until March 24, 2015. In the interim, the Justice Court raised the Defendant's fine to the maximum of $769.60 since it had heard nothing from the Defendant. A block was placed on the Defendant's driver's license and the fine amount was turned over to a collection agency. The collection agency contacted the Defendant in March 2015 and it determined that she had, in fact, paid the entire fine amount as agreed in January 2015.

The Defendant contacted the Justice Court on March 24, 2015 and related her story of having paid the entire amount owed to the Brown County Attorney 's Office in January, 2015. The Defendant thought the entire matter was concluded at that time. She stated she had telephoned the Brown County Attorney's Office in January, 2015 to confirm the amount she owed. She then claimed she was instructed by the Brown County Attorney's Office to send two money orders; one for $250.00 and the other for $108.00. The Justice Court had no knowledge of the money orders. The Defendant sent the two money orders as requested and called County Attorney's Office to make sure they were received. After receiving the above referenced information from the Defendant, the clerk of the Justice Court immediately contacted the County Attorney's Office.

It is my understanding that the Brown County Attorney's Administrative Asst. Vickie Ratliff was contacted on March 24, 2015 by the clerk of Justice Cavanaugh's court to tell the County Attorney's office about the communication she had just received from the defendant Bianca Gloria. Ms. Ratliff immediately went to Justice Cavanaugh's office and upon learning of the issue, left and returned shortly thereafter with $250 in cash, which she attempted to give to the clerk of the Justice Court. Justice Cavanaugh would not accept this money without proper documentation explaining the delay and the change from the original money order to cash. Ms. Ratliff indicated she could not do that and left. Later, County Attorney Shane Britton approached Justice Cavanaugh and attempted to get Justice Cavanaugh to accept cash that he had in his hand to resolve the matter. Justice

Cavanaugh again refused to accept it without written documentation as referenced above. A letter describing these events from Justice of the Peace Jim Cavanaugh to the County Attorney Shane Britton, dated April 8, 2015, is attached as **Exhibit 13**. No money has ever been paid to the Justice Court, nor has any explanation ever been given directly to Justice Cavanaugh for the missing money orders or even the justification for what the second money order of $108.00 was even for. Justice Cavanaugh, on his own motion, entered an order in Ms. Gloria's case releasing her from further liability, which was signed and entered on April 20, 2015. On or about May 1, 2015, Vickie Ratliff either resigned or was terminated. The county attorney advised Justice Cavanaugh that there was an "outside" audit being scheduled for accounts within his office. Justice Cavanaugh reported Mr. Britton to the State Bar of Texas for disciplinary action, a copy of this letter, dated May 1, 2015, is attached as **Exhibit 14**. The proceedings before the State Bar have been postponed, pending the completion of the forensic audit of the county attorney's records referenced below.

As a result of the above referenced matters with the Justice of the Peace and the concerns that arose from this event, the Brown County Auditor Nina Cox requested the Brown County Commissioners Court to engage the services of a forensic auditor to perform an audit of the records of the Brown County Attorney Office. On May 5, 2015 the Brown County Commissioners Court approved the Brown County Auditor's request and entered into a contract with the CPA firm of Belt, Harris, and Pechacek out of Houston, Texas to perform a forensic audit of the Brown County Attorney's hot check account, seizure account, donation account, pretrial diversion account, and court records pertaining to those accounts as per the contract entered into on May 20, 2015. For your information, attached as **Exhibit 15** is a salary analysis of the county attorney's office from 2007 to 2016. The forensic audit has still not been completed as of this date. I am aware that various law enforcement agencies are investigating some of these matters, but I do not have any information about the status of those investigations.

Conclusion

Due to the concerns I have expressed, an opinion from your office is requested as soon as possible. I do not feel I will be doing my job as the Brown County Auditor if I simply "rubber stamp" the county attorney's request for monthly transfer of sums out of the county attorney donation account into his hot check fund over which the Brown County Commissioners Court and I have no control. In particular, due to the livelihoods of those current staff employees who had nothing to do with these matters but whose salaries are no longer adequately being paid out of the county's general fund, I respectfully request an expedited opinion on my questions. Your answers could have a great deal of impact on far more than just Brown County. Thank you for your time and assistance.

Sincerely,

Jennifer D. Robison C.P.A.
Brown County Auditor

cc: Hon. E. Ray West III, Brown County Judge
Hon. Sam C. Moss, Brown County Court at Law Judge
Brown County Commissioners Court
Mr. Shane Britton, Brown County Attorney
Ms. Sharon Ferguson, Brown County Clerk
Ms. Ann Krpoun, Brown County Treasurer
Brown County Sheriff George Caldwell
Ms. Lauren Davidson, Director of Brown/Mills County Community Supervision and Corrections Department
Hon. Jim Cavanaugh, Justice of the Peace Precinct 4
Mr. Micheal Murray, District Attorney, 35th Judicial District of Texas
Hon. Stephen Ellis, District Judge, 35th Judicial District of Texas

BROWN COUNTY COURTHOUSE
200 S. BROADWAY
BROWNWOOD, TEXAS 76801

(325) 646-7431
FAX (325) 643-4053

SHANE BRITTON
COUNTY ATTORNEY
BROWN COUNTY, TEXAS

July 28, 2016

The Honorable Ken Paxton
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548
Attn: Opinions Committee

Via: Certified Mail, Return Receipt Requested
Receipt No. 7006 0100 0005 1968 4960

Email to : Opinions.Committee@texasattorneygeneral.gov

RE: Response to RQ-01111-KP
ML-48025-16
ID# 48025

Dear General Paxton:

On June 14, 2016, the Opinions Committee received a request from Brown County Auditor Jennifer Robison for an opinion regarding the legality of the pretrial diversion program operated by the Brown County Attorney's Office. Since I had no advance notice of the request for this opinion and received my copy two days after the other 14 people on the carbon copy list, I am now taking this opportunity to provide additional relevant information that you may find helpful.

While this request for an opinion poses four important and compelling questions, it is apparent from the face of the document that these issues arise out of a local political squabble that is best answered by the voters of Brown County. Included within the eight page "letter" is one page of questions, followed by a very brief reference to relevant law, then followed up by five pages of woefully inaccurate factual allegations, which in addition to being material misrepresentations, are irrelevant, immaterial and inappropriate for a request such

as this. Additionally, statements such as "under the *guise* of calling these payments "donations" and "*exacting* a "donation" or other payment" have no legal value, but rather are contentious, argumentative and are only included to inflame emotion

The request letter is then followed up with a five page "Letter Brief" that is in fact just short snippets of relevant statutory law and Attorney General Opinions. The length and breadth of this request is a remarkable feat since Mrs. Robison is a part-time employee, who to the best of my knowledge has no experience in county government, and has been on the payroll of Brown County for less than two weeks at the time she "wrote" the letter. As further evidence of the true nature of this request, Mrs. Robison felt compelled to send a carbon copy of her letter to an extended list of local officials, the majority of which have no authority or ability to answer legal questions, in a thinly veiled attempt to embarrass or discredit the County Attorney.

Unfortunately, this is just the latest in a string of well-orchestrated attempts to undermine the functioning of the Brown County Attorney's Office. It is readily apparent to all that have read this letter, particularly those in the legal community that have been provided copies, that Mrs. Robison was not the actual author of the letter or the researcher of the history and facts surrounding this program. It is equally obvious to every attorney who has read this letter that the ghostwriter is merely seeking the assistance from the Attorney General is settling a political score or challenging the legislation passed by the legislature. It is common knowledge among those in the "courthouse community" that those seeking this opinion have the stated intention to use the opinion as a means to seek a criminal investigation or removal. Ask yourself, when was the last time you received a request for an opinion that include in its "letter brief" the definition of Bribery and Gifts to Public Servant, and the statutory grounds for removal of an elected official?

Response to Questions

"Whether the Brown County Attorney under Section 45.125 of the Texas Government Code can lawfully agree with defendants in misdemeanor criminal cases to refrain from prosecuting a violation of law if alleged offenders agrees to "donate" or otherwise pay money to the Brown County Attorney as a part of pretrial diversion agreement with his office."

Section 45.125 of the Texas Government Code allows agreements to be made between the Brown County Attorney and criminal defendants to allow those defendants to pay a donation as a part of an organized pretrial diversion program, subject to accounting procedures as directed by the Brown County Auditor. This was clearly the intent of the legislation that created this section of the law. The sponsor of the bill, Jim Keffer, understood the intent of the law and the committee that considered the bill was explicitly informed of the intent of the bill by Mr.

Locker. This request attempts to get the Attorney General to now opine that the law is a bad law.

To better understand the questions posed, we must look at the history of pre-trial diversions and the enabling legislation. Pretrial Diversions are governed generally by Section 76.11 of the Texas Government Code. Section 76.011 permits a community supervision department to "operate programs for the supervision and rehabilitation of persons in a pretrial intervention program... A person in a pretrial intervention program may be supervised for a period not to exceed one year." TEX. GOV'T CODE ANN. §76.011(a). Chapter 76 does not define the term "pretrial intervention program." Although several other Texas statutes refer to pretrial intervention or pretrial diversion, none defines the concept. However, pretrial intervention does not involve "the placement of a defendant by a court under a continuum of programs and sanctions, with conditions imposed by the court," as community supervision is defined. *See* TEX. CODE CRIM. PROC. §42.12.

Rather, pretrial diversion involves a written agreement entered before trial between the defendant and the prosecutor, pursuant to which the defendant agrees to perform conditions imposed by the prosecutor. The State agrees to dismiss the case if the defendant performs certain conditions within a specified period of time. Both the State and the defendant request that the trial court continue the present trial setting to a certain date in the future to give the defendant time to comply with the agreed conditions. The agreement is then presented to the trial court for its approval. If the trial court approves the agreement, it grants the joint request for continuance and resets the trial. If the defendant complies with the conditions of the agreement, the trial court grants the State's motion to dismiss the pending criminal charges. If the defendant has not complied with the conditions of the agreement, the case proceeds to trial as scheduled. *Fisher v. State*, 832 S.W.2d 641, 643-44 (Tex. App.-Corpus Christi 1992, no pet.).

Prior to 2007, article 102.012 of the Code of Criminal Procedure provided that "[a] person in a pretrial intervention program established under Section 76.011, Government Code, may be assessed a fee that equals the actual cost to a community supervision and corrections department, not to exceed $500, for supervision of the defendant by the department or programs provided to the defendant by the department as part of the pretrial intervention program." TEX. CODE CRIM. PROC. §102.012. In 2007, the legislature created Section 102.0121, which states "A district attorney, criminal district attorney, or county attorney may collect a fee in an amount not to exceed $500 to be used to reimburse a county for expenses, including expenses of the district attorney's, criminal district attorney's, or county attorney's office, related to a defendant's participation in a pretrial intervention program offered in that county. The district attorney, criminal district attorney, or county attorney may collect the fee from any defendant who participates in a pretrial intervention program administered in any part by the attorney's office. Fees collected under this article shall be deposited in the county treasury in a special fund

to be used solely to administer the pretrial intervention program." TEX. CODE CRIM. PROC. §102.0121.

In addition, Chapter 76.015 of the Texas Government Code provides that a department may collect not less than $25 and not more than $40 per month from an individual who participates in a department program or receives department services and is not paying a monthly fee under Section 19, Article 42.12, Code of Criminal Procedure.

In layman's terms, a pretrial diversion agreement cannot exceed 12 months of supervision, and prior to 2007, the maximum a defendant in a pretrial diversion program could agree to pay was $500. Beginning in 2007, a defendant could agree to pay $500 to the prosecuting attorney and a supervision fee not to exceed $40 per month for each month they were on pretrial diversion.

In reality, the common practice throughout Texas has been to enter into pretrial diversion agreements with defendants that exceeded the statutory maximum on both the amount of time the defendant was on a pretrial diversion and the amount of money paid by the defendant. (Exhibit #1, copy of pretrial diversion agreement for 8 years approved by 35th District Judge Stephen Ellis on a sexual assault of a child case, and Exhibit #2, copy of pretrial diversion agreement from Bell County requiring the payment of $1500 on a misdemeanor DWI).

In 2006, my office began discussion with the Brown County Court at Law about establishing a formal DWI Pre-Trial Diversion Program. Prior to that date, pretrial diversions had been entered into on an *Ad Hoc* basis. This program, as eventually established, set forth certain written criteria for inclusion in this program. (See attached Exhibit #3, copy of Brown County DWI Pre-Trial Diversion Program) During these discussions, Assistant County Attorney Ryan Locker (now Assistant United States Attorney), Brown County Court at Law Judge Frank Griffin and I, had extended conversations about the amount of money that defendant's could agree to pay while they were in the program, in part because the money collected would provide additional funding for the DWI Court Program, which would not have been feasible without this funding. (Exhibit #4, letter from Griffin dated November 12, 2009) Recognizing the limitations imposed by Section 76.015 and in an effort to ensure the common practice complied with statutory authority, Mr. Locker was tasked with the job of researching and recommending how best to proceed.

After considerable research by Mr. Locker, he came to me and told me that he believed that he had discovered a revenue source not only for the Court at Law DWI Program, but for our office as well. At that time, the County Attorney's Office was funded from two sources, the Brown County General Fund (tax money) and fees collected from the prosecution of hot checks pursuant to Section 102.007 of the Texas Code of Criminal Procedure. When I ran for County Attorney, I had pledged

to the voters that I would reduce their burden for the costs of criminal prosecutions and place more of that burden of the backs of criminal defendants.

It was Mr. Locker's legal opinion that we could get legislation approved that would allow Brown County to enter into pretrial diversion agreements with criminal defendants that provided for the payment of more than $500. His conclusion was based in part on your opinions in JC-0119 and JC-0042, the only two cases as of 2007 that had addressed this issue.

In JC-0042, your committee, in response to a request from Hopkins County Auditor Suzanne N. Bauer regarding the propriety of the Hopkins County Attorney agreeing to refrain from filing a criminal case if the offender contributed money to "the county or county law library, or to private organizations such as Crime Stoppers, Drug Abuse Resistance Education ("D.A.R.E.") or the Sheriff's Posse, reached a conclusion that "a prosecutor may not require an offender to contribute money to a public or private entity in consideration of the prosecutor's decision not to prosecute". TEX.ATT'Y.GEN.NO. JC-0042 (1999)

Your committee then went on to discuss a prosecutor's discretion. A county attorney's constitutional and statutory duty to prosecute criminal cases in his or her county traditionally provides the prosecutor broad discretion to determine not to prosecute an offense. *See* Tex. Const. art. V, § 21 (requiring prosecutor to represent state in criminal cases within prosecutor's jurisdiction); Tex. Code Crim. Proc. Ann. arts. 2.01, 2.02 (prescribing district and county attorneys' duties); *Meshell v. State,* 739 S.W.2d 246, 254 (Tex. Crim. App. 1987) (en banc) (recognizing "primary function" of district and county attorneys is to prosecute the state's pleas in criminal cases); *State v. Gray,* 801 S.W.2d 10 (Tex. App.-Austin 1990, no writ) (stating that responsibility for criminal prosecutions in Texas is vested in the district and county attorneys). "[T]he duty to prosecute ... requir[es] the prosecuting attorney only to exercise a sound discretion, which permits refraining from prosecuting whenever the prosecutor in good faith thinks that a prosecution would not serve the best interests of the state . . . ." 63 AM.JUR.2d, *Prosecuting Attorneys* § 21, at 133-34 (1997); *see also* 2 Wayne R. LaFave & Jerold H. Israel, Criminal Procedure § 13.2(a), at 160 (1984); National District Attorneys Ass'n, National Prosecution Standards 150, 152-53 (1st ed. 1977).

The committee then distinguishes refraining from prosecuting a criminal offense and the inclusion of defendants in pretrial diversion programs, *referencing generally United States v. Flowers*, 983 F. Supp. 159, 162 (E.D.N.Y. 1997) (and sources cited therein) (describing pretrial diversion or deferred prosecution as technique prosecutors have long used, whereby prosecutor keeps defendant out of criminal justice system but requires defendant to rehabilitate self); 2 LaFave & Israel, Criminal Procedure, § 13.1(d), at 158-59 (1984) (describing pretrial diversion or deferred prosecution as alternative between formal adjudication and outright dismissal of charge).

The committee appears to draw a distinction between refraining to file a case and filing a case and placing a defendant under the supervision of the court pursuant to a pretrial diversion agreement. The committee goes onto state that "rather than this office divining prosecutorial discretion to engage in the practice you describe ... the legislature should have the opportunity to consider whether to allow the practice and if so, what restriction to place on the practice." That statement was true because **Hopkins County had no statutory authority** to support their plan. Unlike Colorado County, and then subsequently Brown County and others that followed, Hopkins County had not approached the legislature and attempted to get a law passed that allowed this practice. Implicit within the committee opinion was the conclusion that if the legislature is fully informed about the intent of legislation, makes an educated opinion and condones this activity by passing legislation, then the practice was appropriate.

Then in JC-0119, your committee, in response to a request from Colorado County Auditor Raymie Kana regarding the propriety of the Colorado County Attorney requiring defendant to pay $1500 to a **nonprofit** as a condition of pretrial diversion, concluded that "as a matter of law a prosecutor may not agree with an offender to refrain from filing a complaint or information in exchange for the offender's contribution to **a designated organization**". The situation in Colorado County, as explained in the request letter, involved "the county attorney utiliz(ing) a pre-trial diversion contractual agreement that outlines the rules of probation and in it ... orders the offender to grant $1,500 to Offenders, Inc., a non-profit corporation before probation on the diversion commences. The county attorney and his two assistant county attorneys' signed the articles of incorporation of the non-profit corporation. The same two assistant county attorneys and spouse of the county attorney's office manager serve as three of the four members of the board of directors of the non-profit corporation. This board of directors controls the disbursement of all funds received from the offenders. In the bylaws, the corporation has designated the Colorado County courthouse as the location of the registered office." RQ-0058-JC (1997). Therefore, the funds collected by the non-profit were controlled and disbursed entirely by the board of directors, independent and separate from county controlled funds, and without the internal controls implemented by the County Auditor.

Prior to the passage of the bill (HB3572, 75th Legislature, 1997) that allowed Colorado County to collect donations, Colorado County was part of a larger Judicial District encompassing multiple counties. The stated intention of HB3572 was outlined in the House Criminal Justice Committee report which states "(t)his bill removes Colorado County from the 25th Judicial District Attorney district and places the functions of the 25th Judicial District Attorney in the office of the Colorado County Attorney in Colorado County. HB 3572 also includes the Colorado County Attorney in the Professional Prosecutors Act" (see exhibit #16). This statement makes no mention of the collection of donations. Then the Enrolled Bill Summary provided by the legislature after passage by both the House and

Senate, but prior to signing by the Governor, states, in its entirety, "House Bill 3572 amends the Government Code to remove representation of Colorado County from the office of district attorney for the 25th Judicial District. The act requires the county attorney of Colorado County to act as the district attorney and includes the county attorney in the list of prosecutors subject to the professional prosecutor's law."(see Exhibit #16).

The collection of donations from anyone, particularly defendants, was **NEVER** mentioned during the consideration of this bill by the House Judicial Affairs Committee or the Senate Criminal Justice Committee or by the Governor prior to this bill becoming law. No mention was made by any witnesses that the Colorado County Attorney intended on operating a pretrial diversion program. Unlike when the legislature considered HB1930 in 2007, they were not fully informed of the intent to use the law to collect donations from defendants.

However, most importantly, the distinction between the Colorado County pretrial diversion plan and the pretrial diversion plan in Brown County, as operated, is significant. In Colorado County, the pretrial diversion agreements required a donation to a non-profit organization, whereas in Brown County, the donation was to the County Attorney's Office. In JC-0119, the committee stated that "(t)he county attorney may not condition an offender's participation in a pretrial diversion program upon a gift of $1500 to a nonprofit entity, regardless of the identity of the incorporators. Section 45.145(b) of the Government Code supports our conclusion." *See* TEX. GOV'T CODE ANN §45.145(b). That section authorizes the Colorado County Attorney to "accept gifts or grants from any individual ... for the purpose of financing or assisting the operation of the office of county attorney in Colorado County." *Id.* Implicitly, the county attorney may not accept gifts or grants for the purpose other than operating the county attorney's office. The purpose for which Offenders, Inc. was incorporated does not appear to directly finance or assist the operation of the Colorado County Attorney's office." TEX.ATT'Y.GEN.NO. JC-0119 (1999) That is in direct contrast to the Brown County plan that required payments directly to the County Attorney specifically for the stated purpose of financing or assisting in the operation of the county attorney's office.

Because of these facts, the Brown County pretrial diversion plan we were in the process of creating was not analogous to the plan operated by Colorado County and the prior opinion offered by this committee in JC-0119 did not serve as a bar to our plans.

Realizing that without this revenue source, the DWI Pre-Trial Diversion Program and the Brown County Court at Law DWI Court would not be viable and desirous to place a greater burden for the costs of prosecution on the backs of the defendants, I agreed with Mr. Locker that we should approach our state representative about sponsoring this bill. **The decision to approach the legislature with our proposal was directly affected by your committee's statement in JC-**

0042 that "the legislature should have the opportunity to consider whether to allow the practice". Prior to approaching Representative Jim Keffer, Mr. Locker met with representatives from the Texas District and County Attorneys Association to apprise them of our plans. Representative Keffer agreed to sponsor what would eventually become HB1930. At each and every step of the process of getting the legislation passed, we were very open and upfront about our desire to use this legislation to create a pretrial diversion program that required the defendant to make a donation to our office and that expressly approved this practice.

Mr. Locker subsequently testified before the House Committee on County Affairs and the Senate Committee on Jurisprudence about this bill. As can be seen in my letter to the legislature (Exhibit #5), our Notice of Intent to Introduce (Exhibit #6) and in Mr. Locker testimony before the County Affairs Committee (Exhibit #7), we were completely transparent about our intent to require criminal defendants to pay a fee to our office to participate in this program. The very first sentence in my letter starts "This legislation is proposed primarily to facilitate our pretrial diversion program... This will ensure that more of our office is funded by offenders ..., rather than by our taxpayers. Like all other expenditures, funds used would be monitored by the county auditor, therefore maintaining constant oversight." During his testimony, Mr. Locker very clearly articulates our position by stating "This bill is essentially to provide our office with a revenue generating tool that currently we don't have... This is a tool that will hopefully keep the expense of our office off the backs of Texas taxpayers ... and on Brown County Offenders. And to insure the public understands our integrity, we are developing a fee schedule so that the defense bar and the public know that any fee collected as a part of this program, such as a pretrial diversion fee, that would be paid partly to operating funds is a part of a regulated schedule ..."

Ultimately, HB1930 passed and became Section 45.125 of the Texas Government Code. Subsequent thereto, we created and began operating the Brown County DWI Pre-Trial Diversion Program and the companion Brown County Court at Law DWI Court. The DWI Court program was overseen by an advisory council consisting of various interested parties, including the former District Attorney Fred Franklin, as well as representatives from my office, probation, the Brown County Court at Law, law enforcement and the local council on Alcohol and Drug Abuse. This advisory council attended training on the operation of the DWI court on July 10 – 13, 2007. (Exhibit #8, copy of participant roster from DWI Court Training) The council approved all of the forms used, including the payment of a donation by the defendants who were a part of the program. Once we began operating the program, all pretrial diversion orders were signed and approved by the Court at Law Judge. All monies collected was divided between the County Clerk, the County Attorney's Office and the Brown County Court at Law, according to a fee schedule outlined in the program packet. (Exhibit #3) Inclusion in this program was completely voluntary and only occurred when the defendant, or their attorney, requested participation.

In November 2009, a well-known "local government watchdog", Joe Cooksey, approached Brown County Court at Law Frank Griffin to complain that he did not believe that he had the authority to order these pretrial diversion fees. Mr. Cooksey has a lengthy history of filing complaints with the Texas Commission of Judicial Conduct, State Bar of Texas and lawsuits against various local officials and governmental entities. Interestingly enough, Mr. Cooksey filed a formal complaint with the 35th District Court in December 2015. Mrs. Robison's Request Letter is a near verbatim recitation of the allegations included in Mr. Cooksey's complaint. Additionally, Mr. Cooksey maintains various social media sites and began making public claims about the legality of the pretrial diversion program approximately 30 days before Mrs. Robison mailed her request letter to you in June 2016. (Exhibit #10)

After further discussion and legal research, Judge Griffin and I both came to the conclusion that this was a legally authorized fee and the program should continue as it was then operating. In 2011, Mr. Cooksey filed a complaint with the Texas State Commission on Judicial Conduct against Judge Griffin. On October 25, 2011, Judge Griffin wrote me a letter in which he references this complaint and states "This creates a dilemma, **because you are authorized by statute to collect fees** that I am not authorized to order. If those fees are collected and receipted by your office under an agreement with the defendant without the Court being involved in the process, **then I do not see a problem as long as the fees comply with your contribution statute**." (see attached exhibit #11) As is evident in this statement, as well as in multiple conversations and meetings on this subject, Judge Griffin thought that the collection of the fees from defendants were appropriate. In fact, between June 2007 (the effective date of the law) and the dissolution of the Brown County Court at Law DWI Court, the Brown County Court at Law spent a considerable amount of these fees operating the program.

Ultimately, grant funding that helped to support the Brown County Court at Law DWI Court was terminated and that program was dissolved. Because of that dissolution, it became obvious to all involved that we needed to transition into an expanded pretrial diversion program that encompassed all misdemeanor offenses. Over the next three years, the pretrial diversion program offered by my office evolved through several different variations and ultimately led to the creation of the Brown County Misdemeanor First Time Offender Program that we operate today. The current program was modeled after other successful pretrial diversion programs in Travis County, Bexar County and Harris County, as well as the input of criminal defense attorneys.

During this transition, we discovered that these other counties were relying on the $500 Prosecutor's Fee to fund their respective programs. That fact, coupled with the reduced need to fund the Court at Law DWI Court Program, ultimately led us to make the decision to no longer enter into agreements with defendants that they would pay a donation under Section 45.125 and strictly order them to pay a fee under Section 102.0121. **No defendant has agreed to pay a donation since 2014.**

It is important to note that all monies collected through the original Brown County DWI Pre-Trial Diversion Program and the Brown County Misdemeanor First Time Offender Program are subject to the same accounting procedures that apply to all money collected and disbursed by Brown County. Mrs. Robison appears to rely on your opinion in JM-1034 to create a distinction between the controls placed on the "donation fund" and the "hot check fund" when she states "any monies transferred into the hot check account from the donation account are no longer under the control of the commissioner court and funds from this account are now being mixed with other funds in the hot check account". While there is a legal distinction between general, donation, and hot check funds created by JM-1034 and its progenies (JM-313, MW-188, and MW-584) as to who controls each, practically speaking there is no distinction in Brown County. As has been the practice in Brown County for 25 – 30 years, all hot check funds are routed through the Auditor's Office and **ALL individual expenditures from this fund are approved by the Commissioner's Court**, according to a budget approved by the Commissioner's Court during the approval of the annual budget. Monthly, all hot check fees collected pursuant to Section 102.007 are deposited into a fund controlled by the treasurer. Any time I, as County Attorney, want to make an expenditure of funds from this account, I complete a Purchase Order (PO) and forward the PO, along with necessary documentation, to the Auditor, who processes the PO according to standard operating procedures. These bills are then presented to the Commissioner's Court for approval, along with all of the other bills of the county. I have no control over the creations of checks written on this account. They are issued by the county treasurer, like every other check from Brown County.

In hindsight, I now realize that HB1930, that eventually became Section 45.125, could have been crafted in such a manner as to create a program that more clearly distinguished itself from the program in Colorado County. While the program operated by my office from 2008 until 2014 was in fact distinguishable from the Colorado County program, more importantly, **the legislature was aware of our intent at the time they approved HB1930**. A plain reading of my letter to the Legislature, our Notice of Intent to Introduce Legislation and Mr. Locker's testimony, makes it perfectly clear that we intended to enter into agreements with defendants for them to pay money to our office as a part of a formal pretrial diversion program. To now imply that our program was somehow illegal is an attempt to circumvent the legislative process. While we no longer operate this program, if Mrs. Robison believes this is a bad law, then she needs to contact one of our representatives about repealing the law. But it is disingenuous on her part to imply that the legislature did not know what they were doing when they approved this law and that her judgment is better than theirs. While it is a moot point since we no longer operate this program, if it was reactivated, she would be free to impose any accounting procedures that she deemed appropriate.

> **"Whether a judge can legally order defendants in misdemeanor criminal cases to make "donations" to the Brown County Attorney as a part of a pretrial diversion agreement with his office."**

No, a judge cannot legally order a defendant to do or refrain from doing anything pursuant to a pretrial diversion agreement. A pretrial diversion agreement is an agreement between a prosecutor and a defendant. Judges simply approve pretrial diversion agreements and postpone a trial date until an agreed upon period of time has expired. Following the October 2011 letter from the Office of Court Administration, we realized that our forms as originally drafted blurred the line between the Court ordering a defendant to do something and approving an agreement between the parties. Because of that we modified our forms. Since 2011, the Court has simply approved our agreements and reset the final trial.

"Whether such pretrial diversion "donations" or payments otherwise received can be lawfully transferred from the Brown County Attorney's donation account fund at the County Attorney's request and with the approval of the Brown County Commissioners Court to be comingled with money in the County Attorney's hot check fund in order to supplement staff salaries of the County Attorney's office."

This is an appropriate question that should be answered.

"Whether a criminal defendant in a misdemeanor case can be legally required to pay a pretrial diversion fee to the Brown County Clerk or the Brown County Attorney as a part of a pretrial diversion agreement with the Brown County Attorney: if (1) it is not ordered by a court, and (2) if it is not related to reimbursing the county for any expenses related to the defendant's participation in a pretrial intervention program, or (3) as a community supervision fee allowed under Article 102.012 of the Texas Code of Criminal Procedure"

While the question as written does not reference a statute, presumably Mrs. Robison is referring to the fee created by Section 102.0121 of the Texas Code of Criminal Procedure. Section 102.1021 authorizes (a) a district attorney, criminal district attorney, or county attorney may collect a fee in an amount not to exceed $500 to be used to reimburse a county for expenses, including expenses of the district attorney's, criminal district attorney's, or county attorney's office, related to a defendant's participation in a pretrial intervention program offered in that county, (b) the district attorney, criminal district attorney, or county attorney may collect the fee from any defendant who participates in a pretrial intervention program administered in any part by the attorney's office, (c) fees collected under this article shall be deposited in the county treasury in a special fund to be used solely to administer the pretrial intervention program. An expenditure from the fund may be made only in accordance with a budget approved by the commissioner's court. TEX. CODE CRIM. PROC. ANN SEC. 102.0121. As previously stated in response to an earlier question, Courts don't order fees to be paid in pretrial diversion agreements. So yes, a defendant can legally agree to pay a pretrial diversion fees absent a court

order. Your committee has addressed appropriate expenditures of these fees in TEX. ATTY GEN. OP. NO GA-1039. In that opinion, you cited TEX. ATTY GEN. OP. NO. GA-0118 (2003) for the proposition that "whether a particular expenditure may be funded by certain fees is a fact question beyond the scope of an attorney general opinion" and the "ultimate determination is for the commissioners court to make ... subject to judicial review" and then would only be found to be an abuse of their discretion is they acted "illegally, unreasonably or arbitrarily".

The Rest of the Story

While the rest of Mrs. Robison's letter relates to irrelevant, untrue and salacious allegations that need not be addressed in order to answer the four questions, I feel compelled to respond so that the committee has the necessary background information to formulate an opinion as to the credibility and true intention of Mrs. Robison.

In her letter, Mrs. Robison attempts to build a case that I, as County Attorney, orchestrated a scheme whereby donations that were collected from defendants were funneled to me personally through the co-mingling of funds collected as donations and fees collected through hot check prosecutions. Mrs. Robison states that this "proposal" resulted in a $15,000 raise for me personally. In actuality, a closer examination of the County Attorney Salary Analysis provided by Mrs. Robison (Exhibit #12 - Robison Request Exhibit #15), shows that my salary in 07/08 was $75,440.46 and in 08/09 was $87,418.07, a raise of $11,977,71. This amount is $8,205.70 more than I would have received if the only increase I received was the same 5% cost of living raise the rest of the county employees received in 08/09.

During the budget process in 2008, I presented my budget request for the Fiscal Year 2008 – 2009. During this process, I asked that the salary portion of my general fund budget remain at the then current level, with the exception of my personal salary, which I requested be raised by $11,559.64, from $44,190.36 to $55,750.00. (Exhibit #13, County Attorney Budget Request FY08-09 and Exhibit #14, copy of budget working sheets provided by Auditor Robison on June 30, 2016) At no time did I suggest that the portion of the salaries of my employees that came from the general fund be reduced to achieve some balance or equalization so that my raise could be funded from the general fund without raising the overall budget. As can clearly be seen from the attached exhibits, I was simply requesting an increase in my budget. Below is a chart that shows the salary information provided by Mrs. Robison, combined with my budget request for FY08-09, then the actual salary for 2009:

2009 Budget Request

	2008 actual	2009 request	2009 actual

S. Britton	$44,190.36	$55,750.00	$56,168.07
N.Valencia	$18,668.34	$19,000.00	$17,806.02
V. Ratliff	$22,057.56	$22,057.66	$22,223.01
D.Boatwright	$ 9,000.00	$ 9,000.00	$ 9,067.50
E.Nix	$38,000.00	$44,000.00	$38,027.46
	$131,916.26	$149,807.66	$143,292.06

As stated before, the budgets for both the general fund and the hot check fund are considered and approved by the Commissioner's Court. Ironically, by memo dated July 1, 2016, the Brown County Judge has begun the FY16-17 budget process. As can be seen by the attached exhibit, the County Judge is soliciting my budget **requests** for General Fund **and** budget **request** for the Hot Check Fund expenditures. (Exhibit #15) Which account money comes from, to pay what bill, or other expenditure, including salaries, is solely within the discretion of the Auditor and Treasurer. On Purchase Orders presented to the Auditor, I have never directed which account, general, donation or hot check; they are to be paid out of. That decision has been solely made by the Auditor.

However, arguendo, even if I had made some suggestion, agreement or formal request to transfer a greater share of the employee's salary to the hot check fund so that I could receive a raise out of the general funds, without increasing the overall general fund budget, that would have been completely within the discretion of the Commissioner's Court. The Commissioner's Court has the sole discretion to determine budgets and salary figures for county employees and officials, subject to the limitations opposed onto them by Texas Local Government Code.

In Opinion KP-0012, your committee clearly outlined the salary-setting process for county officers. The process involves two related sets of procedural requirements. First, the general budget preparation provisions of chapter 111, subchapter A, direct the county judge to "prepare a budget to cover all proposed expenditures of the county government for the succeeding fiscal year." TEX. LOCAL GOV'T CODE ANN. § 111 .003(a). The proposed budget is filed with the county clerk and made available for public inspection. *See id.* §111.006(a)-(b). Afterward, the "commissioners court shall hold a public hearing on the proposed budget" in the time specified by statute. *Id.* § 111.007(a). The Commissioner's Court must notify the public of the date of the hearing on the proposed budget. *See id.* § 111.007(c). The court must additionally publish a notice of public hearing in a newspaper of general circulation between 10 and 30 days before the hearing *See id.* § 11 l.0075(a)-(b). "At the conclusion of the public hearing, the commissioners court shall take action on the proposed budget," which may include "mak[ing] any changes in the proposed budget that it considers warranted by the law and required by the interest of the taxpayers." *Id.* § 111.008(a)-(b). "On final approval of the budget by the commissioners court," the budget is filed with the county clerk and, if the county maintains an Internet website, posted online. *Id.* § 11 l.009(a)(l)-{2).

The second set of requirements, relating specifically to the setting of officers' compensation, directs the commissioner's court to set the salaries of elected county and precinct officials "at a regular meeting of the court during the regular budget hearing and adoption proceedings." *Id.* § 152.013(a). Any salaries that are proposed to be increased, and the specific amount of the proposed increase, must be published in a notice in a newspaper of general circulation at least 10 days before the date of the meeting. *See id.* § 152.013(b). Before filing the annual budget with the county clerk, the commissioners court must additionally notify "each elected county and precinct officer of the officer's salary and personal expenses to be included in the budget." *id.* § 152.013(c). Section 152.011 of the Local Government Code provides "[t]he commissioners court of a county shall set the amount of the compensation ... for county and precinct officers." See article XVI, section 61 of the Texas Constitution. With the only qualifier being Section 152.012 of the Local Government Code that provides that the salary of an officer may not be set at an amount less than the amount of the salary in effect on January 1, 1972.

A closer examination of the expenditures from both the hot check fund and the donation fund show that in the years since September 1, 2007, there have been expenditures from the hot check account that clearly could have been made from the donation account and vice versa. So while transfers of money from the donation account into the hot check have apparently been made by the Auditor (without my knowledge), those bills could have just as easily been paid directly out of the donations account.

Now to address the salacious inclusion of the events surrounding the termination of one of my employees. In April 2015, I was notified by Mr. Jim Cavanaugh, Brown County Justice of the Peace Precinct 1 that it appeared that one of my employees had misappropriated $250. I immediately notified the County Auditor, County Judge, and District Attorney, who notified the Texas Ranger on my behalf. I also requested that an outside audit be performed on all County Attorney financial records to ensure there was no other money missing. It was this request that ultimately led to the Commissioner's Court engaging an outside forensic auditor. The personnel matter was dealt with quickly and appropriately. The employee resigned in lieu of termination. (see Exhibit #17, my letter in response to grievance filed by Judge Cavanaugh and a supplement report that Judge Cavanaugh filed with the state bar after filing the original grievance). I can assure the committee that I never approached Judge Cavanaugh and "attempted to get (him) to accept cash that (I) had in (my) hand to resolve the matter". Despite these facts, Judge Cavanaugh felt "compelled" to report me to the bar. I am vigorously challenging the grievance and anticipate it will be dismissed. I have never received any notification, nor is there any in the record, to indicate that "(t)he proceedings before the State Bar have been postponed, pending the completion of the forensic audit...".

More Appropriate Questions to be Answered

Considering these facts, I would propose that the appropriate questions that should be answered by your committee are the following:

1. **Should funds collected pursuant to Section 45.125, or a similar donation statute, be placed into the General Fund or into a separate Donation Fund?**

2. **Who has the ultimate authority or control of the disposition of those funds?**

3. **Is it appropriate to co-mingle fees collected under Section 45.125 of the Texas Government Code (Donation Fees) and fees collected under Chapter 102.007 of the Texas Code of Criminal Procedure (Hot Check Fees)?**

4. **In the absence of a specific prohibition on the use of fees collected under Section 42.125 of the Texas Government Code, what are appropriate expenditures of those funds?**

5. **What are appropriate expenditures from the Prosecutor Fee collected under Section 102.0121 of the Texas Code of Criminal Procedure?**

I appreciate the time and attention you have given my letter. If I can provide any additional information or clarify any of the above facts, please contact me at your convenience.

With best regards, I am

Very truly yours,

Shane Britton
Brown County Attorney