



**DALLAS COUNTY  
DARRYL D. THOMAS  
COUNTY AUDITOR**

**RECEIVED**

By Opinion Committee at 2:47 pm, Oct 25, 2021

September 29, 2021

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

**RQ-0437-KP**  
**FILE# ML-49047-21**  
**I.D.# 49047**

Re: Request for Opinion

Dear Attorney General Paxton:

I am formally requesting a written opinion on the following question:

**Question:**

Whether the Texas Department of Criminal Justice – Community Justice Assistance Division has the statutory authority to require a local governmental entity: to-wit, the Dallas County Community Supervision and Corrections Department,<sup>1</sup> to remit a portion of locally generated funds to the State of Texas in order to fund a portion of the Appropriations Bill for the next biennium.

This question has two subparts:

- a) Can locally generated fees be considered “state-aid” per statutory interpretation; and
- b) If not, can a state agency require a local entity to return a portion of locally generated funds to the State’s general revenue at the end of each biennium.

**Background:**

It is an established procedure that all state agencies and local entities appropriated state funds by the Legislature return any unused state funds to the State at the end of each biennium unless otherwise directed by statute or rider to the Appropriations Bill.

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<sup>1</sup> Government Code, Section 76.002(a), states that the district judge or district judges trying criminal cases in each judicial district and the statutory county court judges trying criminal cases in the county or counties served by the judicial district shall:

- (1) establish a community supervision and corrections department; and
- (2) approve the department's budget and strategic plan.

See also Tex. Att’y Gen. Op. No. JC-0254 (2000) at 3 (stating that the “jurisdiction of a community-supervision-and-corrections department... is not with the county but with the local district court or courts”).

This has been a longstanding practice of local community supervision and corrections departments. Beginning at the Sixty-Ninth Legislative session in 1985 the Legislature added a rider 8 to the appropriations bill to the Texas Adult Probation Commission (the agency that preceded CJAD) that it was the intent of the Legislature that in Fiscal Year 1986 the funds appropriated in the line item for basic per capita state aid be supplemented by the use of an amount not to exceed \$8,560,000 of unexpended balances of state aid funds held by local probation departments (now known as community supervision and corrections departments).<sup>2</sup> In order to achieve this goal, this rider stipulated that to ensure equal distribution of these funds among local adult probation departments, the Adult Probation Commission had to require local adult probation departments to return the unexpended balances of state aid funds on hand as of August 31, 1985 to the Adult Probation Commission. Nevertheless, the Legislature further provided that refunds in excess of \$8,560,000 and all refunds made during FY 87 had to go into the general revenue funds of the state. After FY 87 the rider required that the Adult Probation Commission develop procedures to return future unexpended balances of state funds back to the state.<sup>3</sup>

Variations of these riders were contained in the Appropriations Bills in following sessions. For example, in the Appropriations Bill in 1995 to fund agencies in FYs 1996 and 1997, Rider 53 stated that the “Community Justice Assistance Division shall maintain procedures to ensure that the state is refunded all future unexpended balances of state funds held by local adult probations departments.” See page V-26 of the 1995 Appropriations Bill. In all of these versions of this rider there was never any direction by the Legislature that locally generated funds be required to be turned back to the State. The only mention in these riders was that unexpended “state funds” be refunded. This followed the practice of any other state agency or entity to return unexpended state funds to the general revenue at the conclusion of the biennium.

Nevertheless both the Texas Adult Probation Commission and later CJAD had a practice of commingling state and local funds of CSCDs and to return both state funds and locally generated funds to the State through a formula that would allow CSCDs to retain a certain portion of funding in order to build their budgets for the next biennium. This practice was deemed more of a convenience to both the field and CJAD and was not legally mandated. The thinking was that the field would receive more funding through this formula and that it would be easier for CJAD to keep accounts of these funds as opposed to having to separate state funding from locally generated funding.

This practice changed in 1999 with the Seventy-Fifth Legislature. During its regular session the Legislature made a couple of significant changes affecting local CSCDs. First the Legislature authorized CSCDs to maintain a six-month fund balance. See TEX. GOV'T CODE § 509.011(g). In addition, the Legislature added a Rider 43 to the appropriations bill for TDCJ stating that TDCJ “shall maintain procedures to

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<sup>2</sup> When the Legislature created the Texas Adult Probation Commission in 1979, Code of Criminal Procedure, Article 42.121, Section 4.01 defined “state-aid” to mean funds appropriated by the state legislature to be used by the [TAPC] for financial assistance to judicial districts to achieve the purposes of this Act and to conform to the standards and policies promulgated by [TAPC]. Thus from the very beginning state aid was always distinguished from locally generated fees, which prior to the creation of TAPC in 1979, had been the sole means of funding adult probation departments in the state.

<sup>3</sup> Even before this rider requiring TAPC to develop procedures to return future unexpended balances of state funds, the TAPC had adopted a policy requiring all adult probation departments to return balances of state aid which had been unexpended and unencumbered as of the 31<sup>st</sup> day of August of each fiscal year to the agency.

ensure that the state is refunded all unexpended and unencumbered balances of state funds held as of the close of this biennium by local CSCDs.” So far, this sentence reflected standard past practices. However, the Legislature added a second sentence to this rider stating that “all fiscal years 1998-99 refunds received from CSCDs by TDCJ are appropriated above in strategies A.1.1., Basic Supervision, A.1.2, Diversion Programs, A.1.3., Community Corrections, and C.2.4., Substance Abuse Treatment.” The Legislature further specified that “any Basic Supervision refunds in excess of \$4,831,537 in fiscal year 2000 are hereby appropriated to TDCJ for Basic Supervision; any Diversion Programs refunds received in excess of \$1,698,395 in fiscal year 2000 are hereby appropriated to TDCJ for Diversion Programs, any Community Corrections refunds received in excess of \$2,217,436 in fiscal year 2000 are hereby appropriated to TDCJ for Community Corrections, and any Substance Abuse Treatment refunds received in excess of \$537,748 in fiscal year 2000 are hereby appropriated to TDCJ for Treatment Alternative to Incarceration Program.” See page V-20 to the Appropriations Bill in 1999.

As a result of this rider the then director of CJAD issued a policy statement dated May 28, 1999. See Attachment 1 to this request.<sup>4</sup> To be candid, this policy statement is confusing. It states that the refund formula, as used in previous years, allows the CSCDs to keep the proportion of locally generated funds remaining in the fund balance while returning the state’s proportion. This statement is not correct. As previously noted, the refund formula took into account both locally generated funds and state funds in calculating the amount refunded to the State. Nevertheless, the policy statement continued to affirm that the rider to FYs 1998-99 (ending on August 31, 1999) requires TDCJ-CJAD to ensure that *the state is refunded all unexpended and unencumbered balances of state funds* (emphasis added). The policy statement further acknowledged the FY 2000 Basic Supervision will be funded *through both state funds (general revenue funds) and FY ’98-’99 refunds (return of unexpended state funds)* (emphasis added) in order to obtain the full level of intended appropriations.

Thus, this policy statement constituted a change in the previous refund formula that included both locally generated funds and state funds. For some inextricable reason, the staff at CJAD never changed the formula to accord with the change in policy. This was either possibly because staff was unaware of the change in policy or could not make the change in accordance with this new policy. One indication as to why the change was never made is a memorandum dated September 15, 2000 to the CSCD Directors by CJAD’s Director of Fiscal Management. In this memorandum the Director of Fiscal Management noted that the Legislative Budget Board had expressed an interest in the amount of local funds collected and that in the previous year TDCJ-Internal Audit had audited the fees reported to CJAD by the CSCDs. However, this memorandum further acknowledged that CJAD had been unable to provide totals of Supervisory Fees and Program Participation Fees collected on a quarterly basis. Moreover, the memorandum stated that CJAD had not been able to provide information concerning non-departmental fees, such as fines and court costs, nor to provide detailed information concerning the amount and type of fees collected from offenders. As such this memorandum sent out a survey to local CSCDs to determine what information the CSCDs maintained in order to gather information concerning fee collections. See Attachment 2 to this request. Thus, the apparent reason that the formula was never

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<sup>4</sup> Although this memorandum to the field is over 20 years old, the opinion letter of TDCJ-OGC acknowledges that it is still valid.

changed to conform to the director's policy statement dated May 28, 1999 was that CJAD staff was unable to comply with the new policy.

### **Legal Briefing on this Request**

In interpreting a statute or an agency policy made pursuant to statute there are several rules that serve as a guide for a correct interpretation. Section 311.011, Government Code, the Code Construction Act provides that:

(a) words and phrases shall be read in context and construed according to the rules of grammar and common usage; [and]

(b) words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

TEX. GOV'T CODE § 311.011(a)-(b). State aid has a particular statutory meaning. Section 509.011, Government Code provides that if CJAD determines that a CSCD complies with division standards and if the department has submitted a strategic plan and the supporting information required by the division and the division determines the plan and supporting information are acceptable, the division shall prepare and submit to the comptroller vouchers for payment to the department as follows:

(1) for per capita funding, a per diem amount for each felony defendant directly supervised by the department pursuant to lawful authority;

(2) for per capita funding, a per diem amount for a period not to exceed 182 days for each defendant supervised by the department pursuant to lawful authority, other than a felony defendant; and

(3) for formula funding, an annual amount as computed by multiplying a percentage determined by the allocation formula established under Subsection (f) times the total amount provided in the General Appropriations Act for payments under this subdivision.

TEX. GOV'T CODE § 509.011(a)(1)-(3). In addition, subsection (h) of this section states that a community supervision and corrections department at any time may transfer to the Texas Department of Criminal Justice any unencumbered state funds held by the department.

As noted in the various riders reviewed in this request for opinion, state funds have always been referenced for return to the state and no mention has been made of locally generated funds. This is not surprising since it is entirely consistent with other state agencies or entities that must return any unspent and unencumbered state funds to the State at the end of each biennium absent a statute or rider directing otherwise. Moreover, in other statutes the Legislature has differentiated between state aid and locally generated funds. Thus for example in Section 76.004(c), Government Code, the Legislature has authorized the judges responsible for establishing a CSCD to appoint for the department a fiscal

officer, other than the county auditor, who among other duties, is responsible for “managing and protecting funds, fees, state aid, and receipts[.]” TEX. GOV’T CODE § 76.004(c)(1).

There are several other rules that must be followed in determining whether an agency policy is valid and that the Attorney General uses in issuing an opinion involving a contested agency policy. Administrative agencies have such implied powers as are necessary to implement or perform powers and duties which are explicitly granted by statute. See *Denton County Electric Cooperative, Inc. v. Public Utilities Commission of Texas*, 818 S. W. 2d 490, 492 (Tex. App. – Texarkana, 1991); see also Tex. Att’y Gen. Op. No. JM-1102 (1989) at 2. Moreover, rules promulgated by an administrative agency are valid if they are constitutional, within the granted power, and adopted in accordance with proper procedure. See *Bexar County Bail Bond Board v. Deckard*, 604 S. W. 2d 214, 216 (Tex. App. – San Antonio, 1980). Also rules and regulations adopted by administrative agencies may not impose additional burdens, conditions or restrictions in excess of or inconsistent with statutory provisions. See Tex. Att’y Gen. Op. Nos. JM-1017 (1989) at 3, DM-101 (1992) at 6; see also *Bexar County Bail Bond Board v. Deckard*, supra. Finally, administrative agencies are creatures of statute and have no inherent authority. See *Denton County Elec. Co-op.*, supra.

Finally, in interpreting a rider to an appropriation bill the rule is that an appropriations bill may “detail, limit, or restrict the use of funds therein appropriated or otherwise ensure that the appropriated money will be spent for the purpose intended.” See Tex. Att’y Gen. Op. No. CM-1199 (1972) at 1, citing *Moore v. Sheppard*, 144 Tex. 537, 192 S. W. 2d 559 (1946), *Linden v. Finley*, 92 Tex. 451, 49 S.W. 578 (1899); see also Tex. Att’y Gen. Op. No. MW-51 (1979). Nevertheless, a rider to an appropriation bill may not “repeal, modify, or amend an existing general law.” See *Moore*, supra; see also CM-1199 at 1, Tex. Att’y Gen. Op. No. DM-81 (1992) at 3.

Having now identified the necessary legal tools to analyze this matter, the next step is to examine two legal opinions that addressed this question. The first, written by Ms. Sheila Gladstone with the law firm Lloyd and Gosselink, came to the conclusion that the current practice of including locally generated CSCD funds in the refund formula was not supported by law or regulatory authority. See attachment 3. Since the legal opinion by Ms. Gladstone is straightforward and thorough, there is no need to recite its analysis in the body of this request for opinion.

The Texas Department of Criminal Justice – Office of the General Counsel also issued a legal opinion on this matter. The OGC came to the opposite conclusion than the one found in Ms. Gladstone’s legal opinion. See attachment 4. Nevertheless, the opinion issued by the OGC is problematic in several respects and therefore this opinion needs to be addressed in the body of this request.

The last sentence in the first paragraph states, “Second, your letter incorrectly assumes Government Code Section 509.011 is the final word on refunds owed to the state. It is not.” Actually Section 509.011 is the final word. As noted above statutes control any rule and regulation adopted by administrative agencies. Also, technical words defined by the Legislature must be construed accordingly. Statutes cannot be read or interpreted simply in a manner that achieves a desired result by the administrative body.

The second erroneous sentence in this opinion letter is that the statutory language in Section 509.011(e) presumptively acknowledges state funding plus locally generated funding. It is interesting that this opinion letter never actually examines the definition created by the Legislature for state aid. First, there is no presumptive acknowledgement of a statute regulating a state agency. State agencies must read statutes as written and defined by the Legislature. Second, a reading of the statute clearly shows that state aid is funding appropriated by the Legislature and does not include locally generated funds.

This is the definition of state aid since the creation of the Texas Adult Probation Commission, i.e., legislatively appropriated funding from general revenue. Any other reading would be inconsistent with the whole purpose of providing state aid to CSCDs. Prior to the establishment of TAPC, all funding for adult probation departments was locally generated. Thus, the purpose for the creation of TAPC was to provide funds to local departments through general revenue in an appropriations bill.

The next erroneous sentence is on page two of the opinion where it states that the "Legislature's delegation of rulemaking authority to TDCJ-CJAD confirms TDCJ-CJAD's authority to consider *all* CSCD funding when determining the refund amount owed by CSCDs to the state." Besides citing some statutory provisions that have no relevance to the question at hand, the Office of General Counsel fails to recognize that rules promulgated by an administrative agency are only valid if they fall within the power granted by the Legislature and are adopted in accordance with proper procedure. Moreover, the Office fails to note that administrative agencies may not adopt policies in excess of or inconsistent with statutory provisions. This includes any provision found in the agency's financial management manual.

Finally, the Office of General Counsel make the statement that the plain language of the riders gives TDCJ-CJAD, not CSCDs, the discretion to determine the refund amount owed to the state by each CSCD. First these riders do not state what the OGC asserts. More importantly the OGC fails to recognize an essential rule in statutory interpretation, to-wit: riders cannot modify or alter statutory provisions. Any resolution of this issue will have to be based on the language in statute and not by any rider.

For the reasons stated in this request for opinion, I am asking that the Office of the Attorney General apply its usual rules for statutory interpretation and issue an opinion on this matter. We look forward to having your opinion at your earliest convenience.

Respectfully submitted,

*Darryl D. Thomas*

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# TEXAS DEPARTMENT OF CRIMINAL JUSTICE

www.tdcj.state.tx.us

Wayne Scott  
Executive Director

May 28, 1999

**TO:** CSCD Directors

**FROM:** Susan Cranford, Director, TDCJ-CJAD

**FC#024 Enclosure A**

**Fund Balance for Basic Supervision**

There have been a number of questions concerning the upcoming biennium and how new legislation affects both the balances remaining at the CSCD level and the refund formula used by TDCJ-CJAD to return any unexpended state funds to the state.

Pending legislation was developed by the Sunset Commission recommending a two-month fund balance cap for Basic Supervision. Many CSCD directors have had input into the pending Sunset legislation. The Fiscal Issues Committee has been working on the fund balance issue for several years. One goal of the Fiscal Issues Committee has always been to develop a stable fund balance for basic operations of the CSCDs. The language in the proposed Sunset legislation was reviewed by both the Fund Balance Subcommittee and by TDCJ-CJAD and was found to be acceptable.

Compromises and changes have been made in the legislature during the legislative session in regard to Sunset's legislation. One of TDCJ-CJAD's responsibilities is to ensure that the CSCDs are provided with available funds. At the same time, we are required to manage these funds in accordance with legislation governing the appropriations. The following is a snap shot of the process we will use in this current biennium as it relates to the refund formula.

**Refund Formula:** The refund formula, as used in previous years, allows the CSCDs to keep the proportion of locally-generated funds remaining in the fund balance while returning the state's proportion. The refund formula will be used at the end of this biennium (FY'98-'99), as it always has been, due to the following conditions:

- The rider to our FY'98-'99 appropriations requires TDCJ-CJAD to ensure that the state is refunded all unexpended and unencumbered balances of state funds. The refund formula is this biennium's process that complies with this appropriations' rider.
- Any changes in current legislation will affect funds received and appropriated during the next biennium (FY 2000 and FY 2001).
- The Legislative Budget Board has proposed a rider to the FY 2000-2001 Appropriations Bill identifying a method of finance for the CSCDs' funding lines. Appropriations Rider 42 will require the use of FY'98-'99 Basic Supervision refunds from CSCDs in the amount of \$4.8 million as a funding source for Basic Supervision. In essence, FY 2000 Basic Supervision will be funded through both state funds (general revenue funds) and FY'98-'99 refunds (return of unexpended state funds) in order to obtain the full level of intended appropriations.

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## COMMUNITY JUSTICE ASSISTANCE DIVISION

Susan Cranford, Division Director

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- Rider 42 will also require that refunds in the other lines--Community Corrections (\$2.3 million), Diversion Programs (\$1.7 million), and TAIP (\$537,748)--be used to support intended appropriation levels for those funding lines.
- **The good news** included in Rider 42 is that FY'98-'99 funds returned in excess of those amounts needed for FY 2000 will be re-appropriated to the same line items. Based on historical levels of money returned to the state, current estimates are that as much as \$8 million could be re-circulated into community corrections during FY 2000.

**The following is being considered for the upcoming biennium:**

**Fund Balance Limits:** It is contemplated that legislation will pass which will allow the CSCDs to maintain a fund balance (reserve) of between two months (Senate version) and six months (House version) for Basic Supervision.

- This legislation allows CSCDs to accumulate up to the amount of the allowed fund balance limit, whichever fund balance limit amount is decided.
- Legislation also allows for emergency or approved special projects in excess of the fund balance limit.
- This legislation allows TDCJ-CJAD to withhold State Aid in an amount equal to the excess over the allowed fund balance limit.
- The details on how this will be accomplished is being worked out with the Fiscal Issues Committee, chaired by Bob Thomas, McLennan County CSCD, and the Fund Balance Subcommittee, chaired by Donna Farris, Bexar County CSCD. The following is currently the recommended process:
  - November 30, 1999, final FY'99 quarterly reports are due from CSCDs.
  - December 1999-January 2000, CJAD staff, using FY'99 expenditure information for Basic Supervision, will calculate the fund balance limits based on the final legislation.
  - Beginning with the FY 2000 third quarter payment, State Aid will be withheld up to the amount in excess of the allowed fund balance limit and any approved exceptions. If the third and fourth quarter State Aid payments are not sufficient to absorb the full excess during FY 2000, then the remaining will be withheld in the next fiscal year (FY 2001). This process would continue each biennium as needed.

Please remember, there is still a week remaining in the legislative session and that neither the Sunset bill nor the appropriations bill are yet finalized. We will notify you of the final impact of our pending legislation.



# TEXAS DEPARTMENT OF CRIMINAL JUSTICE

www.tdcj.state.tx.us

Wayne Scott  
Executive Director

September 15, 2000

To: CSCD Directors

From: Thomas E. Chandonnet, Director of Fiscal Management

FC#01 Enclosure A

CSCD Fee Survey

In the last Legislative session, there was a heightened interest in the fees that were collected by the counties. The Legislative Budget Board, who recommends to the legislature the level of our appropriated line items, has also been interested in the amount of local funds collected. Last year, TDCJ-Internal Audit audited the fees reported to TDCJ-CJAD by the CSCDs.

To date, TDCJ-CJAD has been able to provide totals of Supervisory Fees and Program Participation Fees collected on a quarterly basis. We have not been able to provide information concerning non-departmental fees, such as fines and court costs nor are we able to provide detailed information concerning the amount and type of fees collected from offenders. To provide more informative responses, the Fiscal Issue Committee and TDCJ-CJAD staff have developed the attached initial survey. This survey is designed to determine what information the CSCDs maintain concerning the collection of fees. Once this information is obtained, we will then develop a more specific survey to gather information concerning fee collections. This is only the first step in the process of developing a better understanding of the factors involved in the collection of fees from the offender and our ability in communicating this information to interested parties.

In order to format this survey to one page, some of the questions that require narrative may not provide as much room to respond as may be required for an individual CSCD. If your response requires more room to provide the whole picture, please feel free to attach a page or two to the survey. The survey is intended to collect as much information as possible concerning the complexities of fee collections within the CSCDs.

Please, complete the survey and return it to Tom Chandonnet by October 20, 2000. If you have any questions concerning the survey, call me at (512) 305-9313.

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## COMMUNITY JUSTICE ASSISTANCE DIVISION

Susan Cranford, Division Director

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CSCD: \_\_\_\_\_

This questionnaire is intended to determine the technological capabilities of the CSCDs to provide information on the fees collected (Supervisory Fees, Program Participation Fees, etc) by the CSCDs. Please answer the following questions to your best abilities.

**Part I**

- 1. Is your receipt system automated? Yes No
- 2. Does your receipt system allow you to determine the following:
  - ☛ The total amount of fees assessed by fee category(sup.fees, fines, etc)? Yes No
  - ☛ The total amount of fees due but not collected during the month? Yes No
  - ☛ The total amount of fees collected above the monthly payments due? Yes No
  - ☛ The fees associated with inactive cases and with active cases? Yes No
  - ☛ The total fees that are associated with motions to revoke? Yes No
  - ☛ The total amount collected for the county (fines, court cost etc.)? Yes No
  - ☛ The number of probationers currently paying supervisory fees? Yes No

**Part II**

- 1. What are some factors that make it difficult to collect required monthly fees (i.e., cost of living, employment/unemployment)?  
\_\_\_\_\_  
\_\_\_\_\_
- 2. What is the average monthly supervisory fee(s) assessed by your judges for:  
Felony Supervision? \_\_\_\_\_  
Misdemeanor Supervision? \_\_\_\_\_
- 3. When fees are not paid in full, what priority is placed on the distribution of the fees collected among the different categories (i.e., are collections applied to supervisory fees first and then to court costs, attorney's fees, etc.? Or, are fees applied proportionately among all the fees assessed)?  
\_\_\_\_\_  
\_\_\_\_\_
- 4. Are you able to determine the overall percentage of fee collected by category (sup. fees, fines, etc)?  
By month: Yes No      By Quarter: Yes No  
By year: Yes No
- 5. Currently judges are able to assess supervisory fees from \$25 to \$40. Would you recommend any changes in the amount of supervisory fees that could be assessed? If so, how?  
\_\_\_\_\_  
\_\_\_\_\_
- 6. Additional Comments:  
\_\_\_\_\_



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June 17, 2021

Mr. Arnold Patrick  
Director  
Dallas County CSCD  
1300 W. Mockingbird  
Dallas TX 75747

Re: Locally-Generated Funds Refund Formula

Dear Mr. Patrick:

You requested our opinion on whether a CSCD must include locally-generated funds when calculating refunds of unspent funds to the state. We believe that locally-generated funds should not be included in the refund formula, are not included in the reserve fund cap, and only State funds should be refunded if not spent at the end of the biennium. Such local funds, such as community supervision and reimbursement fees, should be separately accounted for in the treasury account, and not comingled with state funds when reported.

#### Background

We understand that currently CSCDs state-wide report to TDCJ all unspent funds, both state funding and locally-generated funds, and CJAD uses these reports to calculate reserve fund caps and refunds owed back to the state. The reserve fund cap is currently set by statute at six months' basic supervision operating costs (Tx Gov Code §509.011 (g)). The combined refunded amount is rolled into the next biennium's appropriation calculation, so it cannot be spent or the appropriation will be short. The amount of excess funds is used to calculate a reduction in state funding to a CSCD so that its reserves do not exceed the cap in the next biennium.

#### Statutory law does not include locally-generated funds when calculating reserve caps and refunds.

We have uncovered no statutory authority or mandate for locally-generated funds to be included in the refund formula. To the contrary, the legal authority appears to anticipate the logical conclusion that only state-provided funds be refunded to the state. The Texas Government Code's §509.011, which contains reserve cap and refund provisions is entitled "Payment of State Aid" and does not address locally-generated funds.<sup>1</sup> Continually through that statute, the references are

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<sup>1</sup> "State aid" has a specific statutory definition in this context. Section 509.001 (4) of the Texas Government Code states:

"State aid" means funds appropriated by the legislature to the division to provide financial assistance to:

(A) the judges described by Section [76.002](#) for:

June 17, 2021

Page 2

only to “state aid” (§509.011 (c) [“Each department . . . shall deposit all state aid received from the division in a special fund of the county treasury . . . to be used solely for the provision of services . . .”]), and “unencumbered state funds” (§509.011 (h) [“A {CSCD} at any time may transfer the {TDCJ} any unencumbered state funds held by the department.”]). The discussion of the reserve cap and refunds is within these references, and does not include locally-generated funds.

Principles of statutory interpretation require looking at the heading (“Payment of State Aid”) and surrounding sections for determining the contextual meaning of any unclear provisions. Reference to a reserve, contained in a statute that deals only with state aid, can only refer to state aid. We believe that the cap on reserves of six months’ basic supervision operating costs include only state funds, and that locally-generated funds should not be included in determining if there is an excess of the six months’ basic supervision operating costs. Thus, only state funds received that caused the excess would need to be returned to the state.

TDCJ-CJAD’s only communication interpreting the question states that locally-generated funds should not be considered in refund formula.

On May 28, 1999, then-Director of TDCJ-CJAD Susan Cranford issued a memo to CSCD directors regarding the Fund Balance for Basic Supervision and the Refund Formula. Cranford stated, “The refund formula, as used in previous years, allows the CSCDs to keep the proportion of locally-generated funds remaining in the fund balance while returning the state’s proportion.” She further stated that TDCJ-CJAD is “to ensure that the state is refunded all unexpended and unencumbered balances of state funds,” and defines “refunds” as “return of unexpended state funds.” This seems to clearly contemplate that the CSCDs keep all unexpended locally generated funds.

The Cranford memo is currently posted on TDCJ-CJAD’s website, and has not been revoked, modified, or followed by any other opinion on the subject.

The TDCJ-CJAD Financial Management Manual has inconsistent language on the issue that is not in compliance with the statutory language.

The Financial Management Manual (FMM) addresses this issue in a section entitled “Fund Balances/Refund Policy.” The second paragraph is headed “State Funds Returned at the End of the Biennium,” and cites the statutory refund rider in the General Appropriations Act as stating that TDCJ-CJAD must establish policies that ensure “unexpended and unencumbered state funds are returned to the state at the end of the biennium.” There is no reference in this citation to returning locally-generated funds. Yet, in paragraph a. of that section of the FMM, there is a

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- (i) a department established by the judges;
  - (ii) the development and improvement of community supervision services and community-based correctional programs;
  - (iii) the establishment and operation of community corrections facilities; and
  - (iv) assistance in conforming with standards and policies of the division and the board; and
- (B) state agencies, counties, municipalities, and nonprofit organizations for the implementation and administration of community-based sanctions and programs.

statement that “all revenues . . . in the Basic Supervision program shall be considered in determining the amount of any unexpended monies available,” and further states that “TDCJ-CJAD will identify all local and state generated monies from the quarterly financial reports.” This inclusion of local funds is inconsistent with the very statutory language cited in the FMM, and is inconsistent with the Cranford memo issued by CJAD, and exceeds TDCJ-CJAD’s regulatory authority delegated by the legislature.<sup>2</sup>

The Office of Court Administration is the state agency charged with determining the use and disposition of locally-generated funds.

TDCJ-CJAD has consistently stated that funding from other agencies need not be included in the budget submitted to or accounted for by CJAD. For example, CJAD has expressed no interest in reviewing veteran court funding from the Texas Veteran’s Commission or other specialty court funding from the Governor’s Office that has been allocated to CSCDs. Locally generated funds regulated by the Office of Court Administration (OCA) should be treated similarly.

The Office of Court Administration’s Court Cost Charts require 100% of community supervision fees stay with the court, and are not to be submitted to the state.

The OCA publishes a County Clerks’ Misdemeanor Conviction Court Cost Chart – Fines and Reimbursement Fees, and a District Clerks’ Felony Conviction Court Cost Chart – Fines and Reimbursement Fees. In numbers 15 and 16, respectively, of the sections entitled “Court Cost and Fee Destinations,” the OCA states that Community Supervision Fees must go 100 percent to the court supervising the defendant, citing the Code of Criminal Procedure §42A.652 (a), which states that the defendant must pay fees to the court. This instruction is in contrast to other instructions that direct certain court fees to the state or the county.

#### Conclusion and Recommendations

The current practice of including locally-generated CSCD funds in the refund formula is not supported by law or regulatory authority. There is no statutory authority to include locally-generated funds in the refund formula, and relevant statutes address only the return of state-provided funds to the state. TDCJ-CJAD confirmed this in a memo that is currently posted and has not been overturned, and the Office of Court Administration requires that such fees stay with the court. The Financial Management Manual does require including all revenues in the Basic Supervision Program, but this is inconsistent with law and exceeds TDCJ-CJAD’s regulatory authority. Further, the FMM is inconsistent with the 1999 Cranford memo issued by CJAD most likely after this provision of the FMM was published.

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<sup>2</sup> Although not clear in the FMM, it is very likely, based on historical practices dating back over 30 years, that CJAD issued the 1999 Cranford memo *after* issuing the conflicting provision in the FMM. If so, then the Cranford memo actually overturned the procedure outlined in the FMM current at the time. The timing of the FMM provision could be resolved through a Public Information Act, should it be considered relevant.

June 17, 2021

Page 4

Recommendations:

1. CSCDs maintain a separate account within the County Depository to keep local funds separate from state funds.
2. CSCDs would not include any local collections in their TDCJ-CJAD budgets or quarterly reports. CSCDs would instead maintain a separate budget for local collections and expenditures, which would be overseen by the county (auditor/fiscal officer) on behalf of the courts to which the local collections are paid.

TDCJ-CJAD may disagree with this change, but we believe it would need a legislative modification of the statute in order to continue to enforce its practice. Alternatively, CSCDs or TCJC-CJAD could request an Attorney General's opinion on the interpretation of the Payment of State Aid statute.

Sincerely,



Sheila Gladstone



## Texas Department of Criminal Justice

Bryan Collier  
Executive Director

August 19, 2021

Ms. Sheila Gladstone  
Lloyd Gosselink  
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Austin, TX 78701

via email to [sgladstone@lglawfirm.com](mailto:sgladstone@lglawfirm.com)

RE: Letter regarding "Locally Generated Funds," dated June 17, 2021

Dear Ms. Gladstone:

Your letter of June 17, 2021, is wrong. First, your letter incorrectly assumes the Legislature has not accounted for locally generated funding. It has. Second, your letter incorrectly assumes Government Code §509.011 is the final word on refunds owed to the state. It is not.

I. The Legislature has already accounted for locally generated funds.

When determining the amount of state aid to provide Community Supervision and Corrections Departments (CSCDs), Government Code §509.011(e) requires the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ-CJAD) to consider the amounts appropriated in the General Appropriations Act (GAA) for basic supervision *as sufficient* to provide basic supervision *in each year of the fiscal biennium*. However, CSCDs are also expected to collect supervision fees as a method of funding because basic supervision funding has never been considered sufficient to fully fund probation departments. The statutory language in §509.011(e) presumptively acknowledges state funding *plus* locally generated funding will cover community supervision costs.<sup>1</sup>

<sup>1</sup> DP funds and TAIP funds are awarded through competitive grants. However, Substance Abuse Felony Punishment Facility (SAFPF) funding, dedicated salaries funding (formerly Rider 80 salary funds), and high/medium caseload funding (all part of DP funding) are reported as state aid under Basic Supervision. *Financial Management Manual for TDCJ-CJAD*, pp. 5-6 (2019) (FMM).

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Government Code §509.011(g) allows each CSCD to maintain a six-month reserve to cover Basic Supervision operating costs. However, the Legislature also requires TDCJ-CJAD to ensure the refund of all unexpended and unencumbered state funding. GAA, 87th Leg. R.S., ch. 1053, Art. V (TDCJ – Rider 32); *see also* GAA, 86th Leg. R.S., ch. 1353, Art. V (TDCJ – Rider 33). By allowing for a six-month reserve, the statute acknowledges the reserve will be comprised of only locally generated funds.

The Legislature’s delegation of rulemaking authority to TDCJ-CJAD further confirms TDCJ-CJAD’s authority to consider *all* CSCD funding when determining the refund amounts owed by CSCDs to the state. Government Code §509.004 allows TDCJ-CJAD to establish recordkeeping requirements for CSCDs, and Government Code §76.004(g) authorizes TDCJ-CJAD to examine and audit accounts, records, receipts, and expenditures of CSCDs. Neither of these statutory provisions restricts or limits TDCJ-CJAD’s authority to establish requirements or examine and audit accounts for state funding alone.

II. Government Code §509.011 is not the final word on the refunds owed to the state.

CSCDs receive state aid (through the GAA) and collect locally generated funding in the form of fees<sup>2</sup> to provide basic supervision. On average, state aid accounts for only 60% of a CSCD’s budget; local funding accounts for the remaining 40%.<sup>3</sup> Historically, no CSCD has spent *less* state aid than it received.

Since the 75th Legislative Session, the Legislature has included riders in the GAA requiring TDCJ-CJAD to “maintain procedures to ensure that the state is refunded all unexpended and unencumbered balances of state funds held.” The plain language of these GAA riders give TDCJ-CJAD, not CSCDs, the discretion to determine the refund amount owed to the state by each CSCD. Additionally, Government Code §322.019(d) requires TDCJ-CJAD to submit information to the Legislative Budget Board (LBB) for inclusion in the LBB’s Uniform Cost Report, which shows both state and local costs of basic supervision.

For these reasons, TDCJ-CJAD by rule requires CSCDs to report their total revenue and expenditures to TDCJ-CJAD both quarterly and annually. 37 Tex. Admin. Code §163.43(b)(1); *Financial Management Manual for TDCJ-CJAD* at 10–13 (2019) (FMM). TDCJ-CJAD uses these CSCD reports to report and accurately allocate costs for the LBB and to determine the refund amount owed by each CSCD. As TDCJ-CJAD has explained, “[a]ll revenues and expenditures in the Basic Supervision program ... shall be considered in determining the amount of any unexpended monies available.” FMM at 10-11. “*The balance of unexpended monies multiplied by*

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<sup>2</sup> Locally generated funds include both supervision (reimbursement) and program participant fees. Some CSCDs may receive additional funds, not tracked by TDCJ-CJAD, in the form of local governmental support, federal grants, or other sources. *Texas Criminal Justice Agencies Sunset Final Report with Legislative Action*, p. 50, n. 1 (July 2013). Fees collected under Article 102.012, Code of Criminal Procedure, must be reported to either the commissioner’s court or the district court. Tex. Code Crim. Pro. art. 103.005(a)-(b); *see also* Tex. Code Crim. Pro. art. 42A.

<sup>3</sup> The Texas Sunset Commission has also acknowledged CSCD budgets are comprised of state funding and local fee collections. *See Texas Criminal Justice Agencies Sunset Final Report with Legislative Action*, at 45.

*the percentage of TDCJ-CJAD Basic Supervision State aid to the total revenue earned shall be refunded to TDCJ-CJAD.” FMM at 11.*

TDCJ-CJAD uses the following formula to determine the refund amount owed by each CSCD:

$\frac{\text{Total Biennial State Aid}}{\text{(Total Biennial State Aid + Local Funding)}} \times \text{Unexpended Monies Available} = \text{Refund amount due TDCJ-CJAD}$
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This formula is proportional and segregates state aid from local funding; that is, the formula provides for a refund of state aid that is proportional to the amount of locally generated funds. A correct reading of the 1999 memo authored by then TDCJ-CJAD Director Susan Cranford as referenced in your letter of June 17, 2021, also acknowledges this formula, which was used prior to the 1999 memo, remains unchanged to date.

To adopt the statutory interpretation urged in your Letter of June 17, 2021, would render the GAA riders meaningless because there would never be any refunds. The GAA riders show that the Legislature *expects* a refund of unexpended state funds, and such refunds would not be possible if the refund formula failed to identify the proportion of state aid to locally generated revenue when calculating refunds owed to the state by each CSCD.

Since receiving your Letter of June 17, 2021, many CSCDs have responded in opposition, and you issued a clarifying statement on August 2, 2021, noting that your letter “was based on assumptions provided to you by [Arnold Patrick of the Dallas County CSCD], and was intended to answer only narrow questions of statutory law that Mr. Patrick was asking.” In the future, before you issue such sweeping opinions and interpretations of statutory law to all CSCDs based on the assumptions and questions being provided or asked by a single CSCD, please confer with TDCJ-CJAD.

Sincerely,



Kristen Worman  
General Counsel

cc: Carey Green – TDCJ-CJAD Director via email