



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 6, 1994

Honorable Tim Cole  
District Attorney  
Montague County Courthouse  
P.O. Box 55  
Montague, Texas 76251

Letter Opinion No. 94-083

Re: Whether a district attorney's office may accept a contribution from a nonprofit organization for the purpose of enhancing prosecution programs and related question (ID# 24908)

Dear Mr. Cole:

You inform us that several years ago the district attorney's office (the "office") accepted from a nonprofit organization a contribution in the approximate amount of \$10,000 for the purpose of enhancing the office's ability to prosecute a specific type of theft. You question the propriety of the office accepting such a gift, as well as whether the district attorney has discretion to determine, with the approval of the county commissioners court, how the money will be spent.

Article V, section 21 of the Texas Constitution provides for the creation of district attorneys' offices to represent the state in all cases in the district and inferior courts within the district.<sup>1</sup> See also Attorney General Opinion V-1409 (1952) at 3. The legislature may impose duties upon the district attorney in addition to the constitutional duty to represent the state in all cases in the district and inferior courts within the district. *Id.*

Chapter 41 of the Government Code provides generally for prosecuting attorneys, which includes district attorneys. See Gov't Code § 41.101 (defining "prosecuting attorney" to include district attorney). Nothing in chapter 41, nor in any other provision of which we are aware, authorizes a district attorney to accept contributions on behalf of his or her office. In fact, section 41.004 expressly prohibits a district attorney from accepting gifts to prosecute any case the law requires the district attorney to prosecute. Rather, section 41.108 expressly authorizes "[t]he commissioners court of the county or counties composing a district [to] accept gifts and grants from any foundation or association for the purpose of financing adequate and effective prosecution programs in the county or district." See *Commissioners Court v. Criminal Dist. Attorney*, 690 S.W.2d 932, 935 (Tex. App.--Austin 1985, writ ref'd n.r.e.); 36 DAVID B. BROOKS, COUNTY AND

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<sup>1</sup>Section 43.146(a) of the Government Code specifically provides for the office of district attorney in the 97th Judicial District.

932, 935 (Tex. App.--Austin 1985, writ ref'd n.r.e.); 36 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 21.10, at 16 (Texas Practice 1989). We accordingly conclude that the office lacked authority to accept the contribution about which you ask; only the commissioners court may accept such a gift.<sup>2</sup>

Because only the commissioners court is authorized to accept a contribution for the purpose of financing adequate and effective prosecution programs in the county or district, we believe the contribution belongs to the county.<sup>3</sup> Although it must comply with certain statutory requirements, generally the commissioners court has complete discretion to determine how to allocate county funds. See *Rheurark v. Shaw*, 628 F.2d 297, 301 n.5 (5th Cir. 1980), cert. denied sub nom. *Rheurark v. Dallas County*, 450 U.S. 931 (1981); Attorney General Opinion JM-70 (1983) at 3; 35 DAVID B. BROOKS, *supra* § 15.1, at 530. To the extent that it will not contravene any valid conditions placed upon the contribution (and to which the county has agreed), the commissioners court has discretion to determine how to use it "for the purpose of financing adequate and effective prosecution programs in the county or district." See Local Gov't Code § 41.108.

The county's determination must occur in the course of the county's ordinary budget process. See also 36 DAVID B. BROOKS, *supra* § 21.10, at 16 (stating that commissioners court is to determine budget for district attorney's office; commissioners court's determination is subject to challenge only for abuse of discretion). In a county with a population less than 225,001, such as Montague County, the commissioners court must prepare and adopt the budget in accordance with chapter 111, subchapter A of the Local Government Code. See generally *Commissioners Court*, 690 S.W.2d at 933-35 (explaining county budgetary process).

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<sup>2</sup>You do not inquire about, and thus we do not consider, the consequences of the district attorney's unauthorized acceptance of this contribution.

<sup>3</sup>Section 41.005(a) of the Government Code requires a district attorney, within 30 days of receiving money for the county, to pay the money into the treasury of the county.

S U M M A R Y

Pursuant to section 41.108 of the Government Code, only a county commissioners court is authorized to accept a contribution for the purpose of financing adequate and effective prosecution programs in the county or district. Upon receipt by the county, the contribution becomes county money; thus, to the extent that it will not contravene any valid conditions placed upon the contribution (to which the county has agreed) and to the extent that the money finances adequate and effective prosecution programs in the county or district, the commissioners court has discretion to determine how to use it. The contribution is subject to the county's ordinary budget process.

Yours very truly,



Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee