

TOM GREEN COUNTY

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Opinion Committee



SAN ANGELO, TEXAS

OFFICE OF
Auditor

October 14, 1997

Ms. Sarah Shirley
Opinion Committee
Office of the Attorney General
PO Box 12548
Austin, Texas 78711-2548

RA-1017

FILE # MI-39815 -
I.D. # 39815

Dear Ms. Shirley:

On October 13, 1997, I requested an opinion from Stephen H. Smith, District Attorney for the 119th Judicial District of Texas. He has declined to render an opinion for reasons documented in his letter to me, a copy of which is enclosed. The Tom Green County Attorney is unavailable to answer my request for an opinion.

Therefore, I would like to request an Attorney General's Opinion under section 402.042 of the Texas Government Code. My request for an opinion relates to the following circumstances:

As Tom Green County Auditor, I serve as fiscal officer for the Basic Supervision Fund and the Court Residential Treatment Center (CRTC) Fund. These programs are funded by the Texas Department of Criminal Justice - Community Justice Assistance Division (TDCJ-CJAD). Basic Supervision is funded with CJAD Basic Supervision Funding, and CRTC is funded with Diversion Target Programs Funding. The Tom Green County Auditor's Office provides accounting and reporting services for the funds, and the Tom Green County Treasurer acts as depository for the funds referred to above.

During 1993 and 1994, the Tom Green County Treasurer used both Basic Supervision and CRTC funds, commingled with various county funds, to purchase certain investments. On May 25, 1995, Tom Green County sold those investments

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at a loss. The resulting losses for Basic Supervision and CRTC were \$22,146.16 and \$25,222.06 respectively.

At the end of the fiscal year, Tom Green County's independent auditor booked an accounting adjustment to record a receivable in both the Basic Supervision and CRTC funds, and to record a payable in Tom Green County's general fund for the amount of the losses. This accounting adjustment allowed the fund balances to be reported to CJAD as if the funds were to be reimbursed for the investment losses by the county. The receivables and the payable were disclosed in the 1995 independent auditor's report presented to, and accepted by, the Commissioners' Court.

To date, the County has not reimbursed the Basic Supervision or CRTC funds for the investment losses. The receivables and payable related to the investment losses remain recorded on the books of the funds involved.

My questions regarding the circumstances described above are as follows:

- Was the Treasurer's commingling of the CJAD funds with various county funds, for the purpose of investing, legal and proper?
- Is the Tom Green County Commissioners' Court required to reimburse CJAD, or another entity, for the investment losses which occurred in the CJAD funded Basic Supervision and CRTC funds?
- What statute regulates the financial responsibility for CJAD funds deposited with the County Treasurer?

Thank you for your assistance in this matter. Please do not hesitate to contact me by phone at (915) 659-6521, or by mail at 112 West Beauregard, San Angelo, Texas, 76903, if you require further clarification.

Sincerely,

Rebecca Papazian

Rebecca Papazian

Tom Green County Auditor

I'm not sure we'll be answering the commingling question - we'll need to check the status of the case. Either a prosecution is pending, or the Treasurer has been found guilty or acquitted or has pled out. The remaining 2 questions, I imagine, are appropriate. Let's be sure to write briefing both from the auditors and the Treasurers.

TOM GREEN COUNTY
RUNNELS COUNTY
CONCHO COUNTY



TOM GREEN COUNTY COURTHOUSE
SAN ANGELO, TEXAS 76903-5835
PHONE 915/653-1912
OR 915/659-6583
FAX 915/658-6831

STEPHEN H. SMITH
DISTRICT ATTORNEY
119th JUDICIAL DISTRICT OF TEXAS

October 13, 1997

Rebecca Papazian
County Auditor
112 W. Beauregard
San Angelo, TX 76903

RE: CJAD Funds

Dear Ms. Papazian:

I have reviewed your request for an opinion concerning the commingling of CJAD funds with the county funds and the resulting losses that occurred. Since this office received an investigation from DPS which resulted in an indictment against the County Treasurer because of the same and similar acts, I believe I should avoid any appearance of conflict. Therefore, I suggest your questions be directed to the Attorney General's office for an opinion.

Yours truly,

A handwritten signature in cursive script that reads "Stephen H. Smith".

STEPHEN H. SMITH