



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 6, 2022

Mr. Darryl D. Thomas
Dallas County Auditor
1201 Elm Street
Dallas, Texas 75270

Opinion No. KP-0408

Re: Whether county community supervision and corrections departments must remit locally generated funds to the State as unexpended balances at the end of the biennium (RQ-0437-KP)

Dear Mr. Thomas:

You ask whether the agency that provides state funding to community supervision and corrections departments may require them to remit unspent locally generated funds, along with unspent state funds, at the end of the biennium.¹ Your question stems from Rider 32 of the General Appropriations Act for the 2021–22 biennium, which directs the Texas Department of Criminal Justice to “maintain procedures to ensure that the state is refunded all unexpended and unencumbered balances of *state funds* held” at the end of the biennium by the departments. General Appropriations Act, 2021–22 Biennium, 87th Leg., R.S., ch. 1053, art. V, § V-13, 2021 Tex. Gen. Laws 2805, 3378–79 (emphasis added). To understand your question, we first review the manner in which community supervision and corrections departments are funded.

Community Supervision and Corrections Departments and the Community Justice Assistance Division

Community supervision and corrections departments (“departments”) serve the courts and counties in judicial districts by conducting pre-sentence investigations of criminal defendants, supervising and rehabilitating defendants placed on community supervision, enforcing the conditions of community supervision, and staffing community corrections facilities. *See* TEX. GOV’T CODE § 76.002(a)(1), (c); *see also id.* §§ 76.001–.019. A department’s funding comprises locally generated fees and state aid. *See, e.g., id.* § 76.015 (providing for reimbursement fee); TEX. CODE CRIM. PROC. arts. 102.012 (providing for reimbursement fee), 42A.652 (providing for reimbursement fee), 42A.653 (providing for additional monthly fee from certain defendants); TEX. GOV’T CODE § 509.011 (providing for payment of state aid). Additionally, the county or counties

¹Letter and attachments from Mr. Darryl D. Thomas, Dallas Cnty. Auditor, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Sept. 29, 2021), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2021/pdf/RQ0437KP.pdf> (“Request Letter” and “Attachments”).

served by a department provide the department’s “physical facilities, equipment, and utilities.” *Id.* § 76.008(a).

The Community Justice Assistance Division, a division of the Texas Department of Criminal Justice (“TDCJ-CJAD”), sets minimum standards and provides funding for departments. *Id.* § 493.003 (requiring the TDCJ-CJAD to fund and to establish minimum standards for programs, facilities, and services provided by departments). Part of the TDCJ-CJAD’s funding comes from the Legislature’s appropriation in the General Appropriations Act to the Department of Criminal Justice for prison diversions. *See generally* General Appropriations Act, 2021–22 Biennium, 87th Leg., R.S., ch. 1053, art. V, § V-5, 2021 Tex. Gen. Laws 2805, 3370 (Goal A, V-5–“Provide Prison Diversions through Probation & Community-based Programs”). Government Code section 509.011 directs TDCJ-CJAD’s payment of those funds to the departments. *See* TEX. GOV’T CODE § 509.011.

Texas Government Code Section 509.011

Section 509.011 authorizes the TDCJ-CJAD to pay funds to departments that comply with TDCJ-CJAD standards and that submit a strategic plan.² *See id.* § 509.011(a); *see also id.* § 509.001(3) (defining “division” to mean the Community Justice Assistance Division). If the TDCJ-CJAD determines a department complies with its standards and submits an acceptable strategic plan, the TDCJ-CJAD “shall prepare and submit to the comptroller vouchers for payment to the department” with respect to two types of funding: (1) funding on a per capita basis with respect to supervised felony defendants and supervised non-felony defendants; and (2) funding of an annual amount computed through a statutorily specified allocation formula. *Id.* § 509.011(a)(1)–(3). Subsection 509.011(b) also authorizes the TDCJ-CJAD to make certain discretionary grants to departments. *See id.* § 509.011(b). Subsection 509.011(d) requires the TDCJ-CJAD to pay these funds, referred to as “state aid,” to “each department on a biennial basis, pursuant to the strategic plan for the biennium.” *Id.*

Meaning of State Aid

With this background in mind, your first question is whether “locally generated fees [can] be considered ‘state-aid.’” Request Letter at 1, 4–6. The Legislature defined the term “state aid” in chapter 509, so we use that definition. *See Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 894 (Tex. 2018) (recognizing that courts “must adhere to statutory definitions”) (citing *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011) (“If a statute uses a term with a particular meaning or assigns a particular meaning to a term, we are bound by the statutory usage.”)); TEX. GOV’T CODE § 311.011(b) (“Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.”). “State aid” means, in relevant part,

²Section 509.007 provides that the TDCJ-CJAD shall require a department to submit a strategic plan “as a condition to payment of state aid.” TEX. GOV’T CODE § 509.007(a); *see also id.* § 509.007(b) (enumerating required contents of strategic plan); 37 TEX. ADMIN. CODE § 163.25 (providing for contents of strategic plan).

funds appropriated by the legislature to the division to provide financial assistance to:

(A) the judges described by Section 76.002 for:

- (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 [CJAD and the Board of Criminal Justice].

TEX. GOV'T CODE § 509.001(4)(A) (emphasis added). As defined by the Legislature, the term “state aid” includes only “funds appropriated by the legislature,” i.e., the money the Legislature appropriates, usually in the General Appropriations Act. *See id.*; *see also Silguero v. CSL Plasma, Inc.*, 579 S.W.3d 53, 59 (Tex. 2019) (acknowledging that “[a] statute’s plain language is the most reliable guide to the Legislature’s intent”). To the extent the local funds a department receives come from fees required by statute, and not from an appropriation by the Legislature, a court would likely conclude the term “state aid” in section 509.011 does not include a department’s locally generated funds. *See, e.g.*, TEX. GOV'T CODE § 76.015; TEX. CODE CRIM. PROC. arts. 102.012, 42A.652–.653.

With this conclusion, we consider your second question whether the TDCJ-CJAD can require a department to remit a portion of locally generated funds to the State for general revenue at the end of the biennium. *See* Request Letter at 1.

Refund of State Funds

No language in section 509.011 mandates a department’s refund of state funds to the TDCJ-CJAD. *See generally* TEX. GOV'T CODE § 509.011. Instead, that requirement comes from the General Appropriations Act rider. As noted previously, the rider requires the TDCJ to “maintain procedures to ensure that the State is refunded all unexpended and unencumbered balances of *state funds* held as of the close of this biennium by local community supervision and corrections departments (CSCDs).” General Appropriations Act, 2021–22 Biennium, 87th Leg., R.S., ch. 1053, art. V, § V-13, 2021 Tex. Gen. Laws 2805, 3378–79 (emphasis added); *see also* TEX. GOV'T CODE § 509.011(h) (authorizing a department to return unencumbered state funds held by the department). By its plain language, the rider expressly requires the refund of only state funds. *See* General Appropriations Act, 2021–22 Biennium, 87th Leg., R.S., ch. 1053, art. V, § V-13, 2021 Tex. Gen. Laws 2805, 3378–79. General appropriations acts concern the appropriation of funds from the state treasury. *See Moore v. Shepherd*, 192 S.W.2d 559, 562 (Tex. 1946). A rider attached to a general appropriation bill cannot adopt, repeal, modify, or amend an existing

general law. *See Jessen Assocs., Inc. v. Bullock*, 531 S.W.2d 593, 599–600 (Tex. 1975). Thus, to be valid a rider must relate to the appropriation of state treasury funds. *See id.* Moreover, the rider does not expressly require a department to remit locally generated funds. *See* General Appropriations Act, 2021–22 Biennium, 87th Leg., R.S., ch. 1053, art. V, § V-13, 2021 Tex. Gen. Laws 2805, 3378–79. Accordingly, a court would likely conclude the rider does not authorize the TDCJ-CJAD to require a department to remit locally generated funds to the State’s general revenue.³

³We understand the TDCJ-CJAD uses a formula to determine the amount to be remitted by each department. *See* Request Letter, Attachment 4 (Letter from Kristen Worman, Gen. Counsel, TDCJ, to Sheila Gladstone, Lloyd Gosselink at 3 (Aug. 19, 2021)). The TDCJ-CJAD characterizes this formula as providing a “refund of state aid that is proportional to the amount of locally generated funds.” *Id.* To the extent the formula results in a remitted amount that includes funds other than state funds, it is contrary to the requirement in the General Appropriations Act. However, the General Appropriations Act gives the TDCJ-CJAD the discretion in the first instance to “maintain procedures” for the refund of state funds. *See* General Appropriations Act, 2021–22 Biennium, 87th Leg., R.S., ch. 1053, art. V, § V-13, 2021 Tex. Gen. Laws 2805, 3378–79. Because of this discretion and because the calculation of this formula involves consideration of facts outside the purview of an Attorney General opinion, we do not opine on the question whether the formula conforms with state law. *See* Tex. Att’y Gen. Op. No. GA-0353 (2005) at 5 (acknowledging that the opinion process does not address fact questions).

S U M M A R Y

Chapter 509 of the Government Code governing community supervision and corrections departments defines “state aid” as funds appropriated by the Legislature to the Community Justice Assistance Division of the Texas Department of Criminal Justice to provide assistance to the departments. The term does not include funds locally collected and maintained by a department.

A rider in the General Appropriations Act for the 2021-22 biennium directs the Texas Department of Criminal Justice to require the refund of unexpended and unencumbered state funds from community supervision and corrections departments. Nothing in the rider’s language authorizes the Texas Department of Criminal Justice to require the remittance of locally generated funds.

Accordingly, a court would likely conclude the Texas Department of Criminal Justice’s Community Justice Assistance Division may not require a department to remit locally generated funds to the State’s general revenue.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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