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RENE PEÑA
DISTRICT ATTORNEY
81st Judicial District

COUNTIES OF:
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KARNES
LA SALLE
WILSON

RECEIVED

914 MAIN ST., SUITE 120
JOURDANTON, TEXAS 7802
OFFICE: (830) 769-3433
FAX: (830) 769-2420

NOV 16 2004

OPINION COMMITTEE

RQ-0294-GA

November 12, 2004

FILE # MC-44019-04

I.D. # 044019

Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

VIA U.S. MAIL C.R.R.R.

Re: Opinion request concerning the use of
forfeited monies to fully fund a staff
position within the office of the District
Attorney

Dear General Abbott:

To my knowledge, the 81st District Attorney's office has never used monies from the forfeiture account to fund employee salaries. I would like to create a new staff position in my office and fund it completely out of the forfeiture account.

May the office of the District Attorney use money from its forfeiture account to fully fund one or more staff positions within its office, and if so, must the budgets for those employee's salaries be submitted to and approved by the commissioners court?

With respect to the first inquiry, I believe that the District Attorney can fully fund a staff position out of the forfeited funds that have been awarded to our office.

Article 59.06 of the Code of Criminal Procedure provides in pertinent part:

- (c) If a local agreement exists between the attorney representing the state and law enforcement agencies, all money...or proceeds ...shall be deposited according to the terms of the agreement into one or more of the following funds:

(1) a special fund in the county treasury for the benefit of the office of the attorney representing the state, to be used by the attorney solely for the official purposes of his office.

(d) Proceeds awarded under this chapter to ...the attorney representing the state may be spent by ...the attorney after a budget for the expenditure of the proceeds has been submitted to the commissioners court....A commissioners court ...may not use the existence of an award to offset or decrease total salaries, expenses, and allowances that ...the attorney receives from the commissioners court...at or after the time the proceeds are awarded. The...attorney representing the state may not use the existence of an award to increase a salary, expense, or allowance for an employee of the attorney...who is budgeted by the commissioners court ...unless the commissioners court...first approves the expenditure.

A literal reading of these provisions appears to grant the District Attorney the authority to spend the forfeited funds at his or her discretion, so long as the expenditure is used for the official purposes of his office. Arguably, the hiring of additional employees would further the official purposes of the office. This reasoning appears consistent with Attorney General Opinion No. DM-72 (1991) which found that ...it is the ...law enforcement agency to which forfeiture funds are distributed under article 59.06...that has the authority to determine the law enforcement purposes for which such forfeiture funds are to be spent. Just as the law enforcement agency can determine law enforcement purposes, so can the attorney representing the state determine the official purposes of his office.

Assuming that the District Attorney can fund employee positions from the forfeiture account, must the budgets for those employee's salaries be submitted to and approved by the commissioners court?

Based on our reading of Article 59.06 (d) and Attorney General Opinion No. DM-246 (1993), I believe that a budget for the expenditures must be submitted to, but does not have to be approved by the commissioners court.

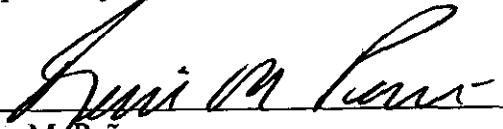
Article 59.06 (d) (quoted above) clearly states that proceeds awarded may be spent by the attorney representing the state after a budget for the expenditure has been submitted to the commissioners court. The section further details that the attorney representing the state may not use the existence of an award to increase salary, expense, or allowance for an employee of the attorney who is budgeted by the commissioners court unless the commissioners court first approves the expenditure.

By specifically detailing which expenditures require approval from commissioners court, one may infer that all other expenditures not specifically listed in subsection (d) do not require approval from the commissioners court. This

inference is supported by Attorney General Opinion No. DM-246 which found that subsection (d) requires only the categorical submission of a budget of proposed forfeiture-fund expenditures and does not require the governing body's approval of the budgeted expenditures, except for increases in "salary, expense, or allowance for" certain employees. See Attorney General Opinion No. DM-246 (1993) at 4. It follows that an employee that is fully funded from the forfeiture account would not be budgeted by the commissioners court, and thus, would not require approval from the commissioners court. In that opinion, the Attorney General concluded that subsection (d) grants purchasing authority to the attorney representing the state and generally requires only that the relevant governmental body be kept informed of aggregate expenditures of forfeited funds and that the expenditures be subject to audit. Id.

We respectfully request your opinion regarding whether our interpretation of Article 59.06 is correct.

Respectfully submitted,



Rene M. Peña
District Attorney