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OPINION COMMITTEE

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RQ-1141-GA

The Honorable Gregg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RE: Whether pretrial intervention program funds, collected under Texas Code of Criminal Procedure 102.0121(a) and (c), may be allocated to pay to refurbish a courtroom, to train new county court at law staff, to purchase office supplies for the county court at law staff, and/or to purchase office supplies for the county attorney's office.

Dear General Abbott:

I respectfully submit this opinion request to secure an opinion concerning the proper expenditure of pretrial intervention program funds accumulated in accordance with Texas Code of Criminal Procedure Art. 102.0121.

Article 102.012 of the Texas Code of Criminal Procedure and §76.011 of the Texas Government Code afford district and county attorneys the ability to offer pretrial intervention programs, also known as a pretrial diversion agreements, to persons charged with committing violations of the law. The pretrial intervention program confers upon the State a unique method of disposing of criminal cases. A pretrial intervention was described in *Fisher v. State*, 832 S.W.2d 641, 643 (Tex. App.—Corpus Christi 1992, no writ), as "...a written agreement the defendant and State enter into on or before the day of trial. The State agrees to dismiss the case if the defendant performs certain conditions within a specified period of time." Later the Court continued, "If the defendant has not complied with the conditions of the agreement, the case proceeds to trial as scheduled." *Id.* at 644.

Participants in a pretrial intervention program authorized by the court, may be ordered to pay, among other fees, a fee not to exceed \$500.00 to reimburse a district attorney's, criminal

district attorney's, or county attorney's office for county expenses associated with administering the pretrial intervention program. See Tex. Code of Crim. Pro. Art. 102.0121 (West Supp. 2012). Article 102.0121(c) provides that the program fees collected for reimbursement to a district or county attorney's office must be retained in an individual account and may only be used for costs to conduct the pretrial intervention program. *Id.*

However, Art. 102.0121 is silent on the proper method for utilizing the program funds collected in accordance with the statute. *Id.* The Code of Criminal procedure fails to provide any further insight into the phrase "...to administer the pretrial intervention program." No statute or case law could be located detailing a specific expenditure as being authorized or prohibited under Art. 102.0121.

When interpreting a statute, courts are to consider legislative intent. *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011), *State v. Oliver*, 808 S.W.2d 492, 495 (Tex. Crim. App. 1991). In discerning the Legislature's desires, words and phrases are to be interpreted in accordance with the rules of common usage, unless such an interpretation would cause unreasonable results. *City of Waco v. Kelley*, 309 S.W.3d 536, 542 (Tex. 2008). Each word contained within a statute is assumed to be present for a purpose and the rules of statutory construction require each sentence, clause, phrase, or word to be given effect, if possible. *TGS-NOPEC Geophysical Co.*, 340 S.W.3d at 439. Thus, the use of the word "administer" by the Legislature must first be determined.

In analyzing whether a fee assessed by the commissioners court and collected under the authority of §118.131 of the Local Government Code constituted a tax as defined in the Tax Code, the Court, in *Harris County v. Proler*, 29 S.W.3d 646, 649 (Tex. App.—Houston [14th Dist] 2000, no pet.), examined the use of the word "administer" as used in the Tax Code. The Court considered definitions from Webster's Dictionary and Black's Law Dictionary. *Id.* In examining both sources, the Court found that, essentially, both defined "administer" as to manage, direct, or conduct. *Id.*

It could be argued that allocating program funds to refurbish a courtroom, to train new county court at law staff, to purchase office supplies for the county court at law staff, and/or to purchase office supplies for the county attorney's office are causes that assist in the management or the implementation of the pretrial intervention program. All facilitate the prosecution of individuals.

Although the contravening argument could be made that these selected methods of use may only have an indirect or collateral impact on the management, direction, and conduction of pretrial intervention programs, the statute does not explicitly require that the funds be expended in any direct manner. The purpose of the program fee, which is not to exceed \$500.00 under Article 102.0121(a), is to compensate the *county* and the *county attorney's office* for expenses associated with providing the pretrial intervention program to individuals. Without proper material resources and knowledgeable and informed court staff, the administration of a pretrial intervention program is compromised.

The question presented is whether the use of such funds for the purposes of refurbishing a courtroom, training new county court at law staff, purchasing office supplies for the county court at law staff, or purchasing office supplies for the county attorney's office constitutes an expenditure associated with administering a pretrial intervention program under Article 102.0121 of the Code of Criminal Procedure.

I look forward to your response. If you have any questions or require additional information, do not hesitate to contact me at 830-769-3573.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lucinda Vickers". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Lucinda Vickers
Atascosa County Attorney
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Jourdanton, Texas 78026