



RICARDO RODRIGUEZ, JR.
CRIMINAL DISTRICT ATTORNEY

August 25, 2015

Raymundo Eufrazio, CPA
Hidalgo County Auditor
Hidalgo County Administration Building
2808 South Business Highway 281
Edinburg, Texas 78539-6243

RE: Request for Opinion on the District Attorney's use of Chapter 59 discretionary funds.

Dear Mr. Eufrazio,

It is my understanding that you have concerns over my office's participation in the DWI "no refusal" program in collaboration with the Hidalgo County Sheriff's Office and the Hidalgo County Health Department. More specifically, you have concerns over the use of the District Attorney's discretionary funds to pay overtime for the nursing staff necessary to perform the blood draws which will occur subsequent to a probable cause warrant.

Please be advised that the DWI "no refusal" weekend is scheduled to take place over the Labor Day holiday weekend. It is a joint effort by all local law enforcement, including the state Department of Public Safety (DPS) and which requires the participation of the Hidalgo County Criminal District Attorney's Office. In that regard, the services requested by the Hidalgo County Health Department's nursing staff is so that the blood draws are performed in accordance with state law and solely for the County's participation in this program.

My office has evaluated the permissive use of Chapter 59 funds in light of recent changes to the statute. In 2014, the Texas Attorney General issued an opinion which notes that the proposed list of uses identified in Section 59.06 (d)(4) of the Code of Criminal Procedure is not an exclusive or exhaustive list, but rather, a list for the purpose of providing illustration. For that reason, it would be up to the District Attorney to determine if the use of monies meets the requirements that the expenditure is made as it relates to the preservation, enforcement or administration of state laws in the context of Chapter 59 requirements. There is no statute, case law or AG opinion directly on point as to the appropriate use of the monies and/or which prohibits the use of the monies for the purpose identified herein. *See below.*

The Legislature recently amended Article 59.06 to specify that an expenditure of asset forfeiture funds "is considered to be for an official purpose of an attorney's office if the expenditure is made for an activity of an attorney or office of an attorney representing the state that relates to the preservation, enforcement, or administration" of state laws, "including an expenditure made for" one of nine listed purposes. *See Tex. Atty. Gen. Op. GA-1059 (2014).*

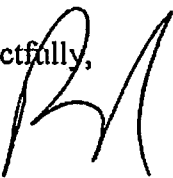
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The plain language of Article 59.06(c)(1) requires that asset forfeiture funds earmarked “for the benefit of the attorney representing the state” be used “*solely* for the official purposes of his office.” TEX. CODE CRIM. PROC. ANN. art. 59.06(c)(1) (West Supp. 2013) (emphasis added). To satisfy Article 59.06(c)(1), an expenditure must be made “for an activity” of the attorney or his office, and the activity must “relate to the preservation, enforcement, or administration of state laws. *Id.* art. 59.06(d-4). Article 59.06(d-4) provides a list in subparts (1)-(9) meant to illustrate the kinds of purposes for which an expenditure can be made. *Id.*; see *Jackson Law Office, P.C. v. Chappell*, 37 S.W.3d 15, 25-26 (Tex. App.—Tyler 2000, pet. denied) (applying the definition of the term “includes” from the Code Construction Act to conclude that a list following that term is “for purposes of illustration”); TEX. GOV’T CODE ANN. § 311.005(13) (West 2013) (defining the terms “include” and “including” as “terms of enlargement and not of limitation or exclusive enumeration”). While Article 59.06(d-4)(7) authorizes an expenditure for “facility costs, including building purchase,” not all facility costs and building purchases are for an official purpose of the prosecuting attorney’s office. Only those that “relate to the preservation, enforcement or administration” of state laws through some activity of the prosecuting attorney’s office are permitted. TEX. CODE CRIM. PROC. ANN. art. 59.06(d-4)(7) (West Supp. 2013). Because Article 59.06 permits expenditures of asset forfeiture funds for such qualifying purposes, the funds may not be used for purposes that do not relate to the preservation, enforcement or administration of state laws through an activity of the district attorney’s office. See Tex. Atty. Gen. Op. GA-1059 (2014).

Further, the provisions under Chapter 59 allow the funds to be used for “investigative costs, including payments to informants and lab expenses,” as well as for “legal fees, including court costs, witness fees, related costs, including...professional fees.” See *id.* at (d-4)(7)&(9).

As mentioned above, Article 59.06 identifies some instances where proceeds may be used. See *id.* In my opinion, the use of funds in connection with an investigation connected to a “no-refusal” DWI program is an appropriate use of the funds which would be used to help facilitate the preservation, enforcement or administration of state laws. Finally, the use of the funds is within the discretion of the District Attorney and therefore, approval of the Hidalgo County Commissioners Court is not necessary. I am only requesting that the Hidalgo County Commissioners Court appropriate the funds necessary to support this joint County program in which my office is participating.

Should you have any questions or need any further information, please feel free to contact me office.

Respectfully,


Ricardo Rodriguez
Criminal District Attorney

cc: Hidalgo County Commissioners Court
Judge Noe Gonzalez, Jr.