



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

February 18, 1998

The Honorable Barry L. Macha
Wichita County Criminal District Attorney
900 Seventh Street
Wichita Falls, Texas 76301-2482

Letter Opinion No. 98-008

Re: Whether state aid to a community corrections facility may be used to provide services and programs to a person convicted of or charged with a noncriminal offense (RQ-949)

Dear Mr. Macha:

You ask us to determine whether state aid to a community corrections facility may be used to provide services and programs to a person convicted of or charged with a noncriminal offense. You also ask, more specifically, whether state aid may be used for the housing in a community corrections facility of a person ordered to be confined there for contempt of a court order to pay child support.

Your questions arise from the events of a particular case.¹ You tell us that in a civil action for enforcement of an order to pay child support, a Wichita County court-at-law judge found a father in arrears and ordered him committed to the county jail for contempt of a court order. In lieu of confinement in the county jail, the court placed the father on probation for twelve months and ordered, as a condition of probation, that he reside for ninety days in the North Central Texas Community Corrections Facility/Restitution Center. We assume that the center receives state funds by way of the Texas Department of Criminal Justice ("TDCJ"). TDCJ does not object to the father being housed in the facility, but objects to the use of state aid for such housing. TDCJ, in a letter submitted to this office, argues that state aid for community corrections facilities may be used only to house and provide services to a defendant charged with or convicted of a state penal offense.

The law governing community supervision and corrections facilities comprises several interrelated statutes. Chapter 76 of the Government Code requires the district judge or judges trying criminal cases in each judicial district to establish a community supervision and corrections department, and to employ personnel as necessary "to conduct presentence investigations, supervise and rehabilitate defendants placed on community supervision, enforce the conditions of community supervision, and staff community corrections facilities." Gov't Code § 76.002. Chapter 509 of the code defines a community corrections facility as "a physical structure, established by a judicial district . . . , that is operated by a department or operated for a department by an entity under contract with the department, for the purpose of confining persons placed on community supervision and

¹This opinion does not rule or comment on any aspect of that particular case.

providing services and programs to modify criminal behavior, deter criminal activity, protect the public, and restore victims of crime." *Id.* § 509.001. A "department" for purposes of chapter 509 means a community supervision and corrections department established under chapter 76. *Id.* § 509.001(2). Chapter 76 was adopted in 1989 as part of a bill "relating to the reform of the criminal justice system." Act of May 29, 1989, 71st Leg., R.S., ch. 785 (preamble), 1989 Tex. Gen. Laws 3471, 3471.

Article 42.12 of the Code of Criminal Procedure defines community supervision for purposes of chapter 76:²

(2) "Community supervision" means the placement of a defendant by a court under a continuum of programs and sanctions, with conditions imposed by the court for a specified period during which:

(A) criminal proceeding are deferred without an adjudication of guilt; or

(B) a sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine, is probated and the imposition of sentence is suspended in whole or in part.

Code Crim Proc. art. 42.12, § 2. A judge may place a defendant on community supervision after a conviction or a plea of guilty or *no lo contendere*, *id.* § 3(a), pleas available only in prosecutions for criminal offenses.

The Family Code also provides for the imposition of community supervision, in civil actions brought to enforce child support orders: "The court may place the respondent on community supervision and suspend commitment if the court finds that the respondent is in contempt of court for failure or refusal to obey an order rendered as provided in this subtitle." Fam. Code § 157.165. We assume, and TDCJ does not disagree, that a respondent placed on community supervision may be ordered to reside in a community corrections facility.

Funding for community supervision and corrections departments and facilities comes from several sources. The salaries of department employees are paid by the judicial districts served by the department. Gov't Code § 76.006(b). The county or counties served by a department are required to provide the department with physical facilities, equipment, and utilities, *id.* § 76.008, and the district judge or judges may expend district funds for these purposes under certain circumstances, *id.* § 76.009(a). Part of a department's funding comes from the state by way of the Community Justice Assistance Division of TDCJ. *Id.* §§ 76.010; 493.003(a); 509.006, .011. Departments are also funded from fees assessed to persons placed in criminal pretrial intervention programs. Code

²Chapter 76 provides: "'Community supervision' has the meaning assigned to it by Section 2, Article 42.12, Code of Criminal Procedure." Gov't Code § 76.001.

Crim. Proc. art. 102.012. A department may accept public funds and grants and gifts from any source for the purpose of financing programs and facilities. Gov't Code § 76.007.

A community corrections department and facility might also be supported with fees collected from respondents in child support enforcement cases who have been sentenced to community supervision for contempt of a court order. Section 157.213 of the Family Code provides: "The court may require the respondent to pay a fee to the court in an amount equal to that required of a criminal defendant subject to community supervision." A fee collected pursuant to section 157.213 must be deposited "in the special fund of the county treasury provided by the Code of Criminal Procedure to be used for community supervision." This provision refers to article 42.12, which requires fees collected from defendants on community supervision to be deposited "in the special fund of the county treasury, to be used for the same purposes for which state aid may be used under Chapter 76, Government Code." Code Crim. Proc. art. 42.12, § 19(b). The fact that fees charged to a contemnor in a child support case may be used to fund community corrections facilities supports our assumption that contemnors may be housed in such facilities.

The source of funds about which you ask is "state aid" from the Community Justice Assistance Division of TDCJ. By "state aid" we understand you to mean funds provided under the authority of chapter 509 of the Government Code. Gov't Code §§ 509.001, .006, .011.

(4) "State aid" means funds appropriated by the legislature to the division to provide financial assistance to:

(A) judicial districts, for:

(i) the administration of departments;

(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 division and the board; and

(B) state agencies, counties, municipalities, and nonprofit organizations for the implementation and administration of community-based sanctions and programs.

Id. § 509.001. A department that receives state aid must deposit funds received from the division into a special fund of the county or municipal treasury, and the funds must be used solely "for the provision of services, programs, and facilities under [chapter 509, Government Code] or Subchapter

H, Chapter 351, Local Government Code.” *Id.* § 509.011(c). As the use of state aid is limited to the services, programs, and facilities provided for in chapter 509 and chapter 351, subchapter H, we examine those authorities.

Chapter 509 of the Government Code establishes the Community Justice Assistance Division of TDCJ and authorizes the division to fund, support, and regulate community supervision and corrections departments and facilities. This chapter, like chapter 76, was adopted in 1989 as part of a bill “relating to the reform of the criminal justice system.” Act of May 29, 1989, 71st Leg., R.S., ch. 785 (preamble), 1989 Tex. Gen. Laws 3471, 3471. Its stated purpose is to:

(1) allow localities to increase their involvement and responsibility in developing sentencing programs that provide effective sanctions for *criminal defendants*;

(2) provide increased opportunities for *criminal defendants* to make restitution to victims of crime through financial reimbursement or community service;

(3) provide increased use of community penalties designed specifically to meet local needs; and

(4) promote efficiency and economy in the delivery of community-based correctional programs consistent with *the objectives defined by Section 1.02, Penal Code.*

Gov’t Code § 509.002 (emphasis added). The first two purposes provide for services to criminal defendants. The fourth is aimed at meeting the objectives of the Penal Code, which generally are to define, deter, and punish criminal behavior. See Penal Code § 1.02. We recognize that the third purpose and other parts of chapter 509 do not expressly refer to criminal defendants or otherwise expressly exclude civil proceedings from their application. However, we believe that the purposes of chapter 509, viewed in conjunction with the preamble to chapter 509’s enacting legislation,³ with chapter 509 as a whole,⁴ and with related provisions in chapter 76 and Code of Criminal Procedure article 42.12, indicate that chapter 509 is intended to authorize TDCJ’s Community Justice Assistance Division to fund community supervision services provided to *criminal defendants*.

³See Gov’t Code § 311.023 (Code Construction Act) (“In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the . . . preamble. . .”).

⁴A court that is called upon to interpret a portion of a statute will consider the intent and purposes of the act in its entirety. See *Fleming Foods of Texas, Inc. v. Sharp*, 951 S.W.2d 278, 281 (Tex. App.—Austin 1997, n.w.h.).

Chapter 351, subchapter H, of the Local Government Code permits a county commissioners court, with the written consent of the sheriff, to establish a county correctional center. Local Gov't Code § 351.101. A county correctional center program may:

- (1) house and provide work programs and counseling for:
 - (A) persons *convicted of misdemeanors* and sentenced to a term of confinement in county jail;
 - (B) persons *required as a condition of misdemeanor or felony probation* to serve a term of confinement in county jail; or
 - (C) persons required to serve a term of confinement in county jail *as punishment for violation of a condition of misdemeanor or felony probation*; or
- (2) in cooperation with the community supervision and corrections department serving the county, operate work programs and counseling programs for persons required as a condition of misdemeanor or felony probation to participate in those programs.

Id. § 351.183 (emphasis added). A center may receive state aid for these purposes. *Id.* § 351.184. Chapter 351, subchapter H authorizes services to persons charged with or convicted of misdemeanor or felony penal offenses. Consequently, state aid granted under this subchapter may not be used to provide services and housing to defendants in civil actions.

In sum, in answer to your first question, we conclude that state aid provided to a community supervision and corrections department under the authority of chapter 509 to serve the purposes of chapter 509 may be used only to provide services to criminal defendants. Similarly, although it does not apply to the facility about which you ask, state aid provided to a county correctional facility under the authority of chapter 509 to serve the purposes of Local Government Code chapter 351, subchapter H, may be used only to provide services to persons charged with or convicted of a misdemeanor or felony offense.

We now turn to your second question. You ask whether state aid may be used for the maintenance and housing of a person sentenced to a community corrections facility for contempt of a court order to pay child support. TDCJ argues that because child support enforcement proceedings are civil cases, state aid may not be used. We agree.

We are mindful that courts and this office have long recognized that for purposes of due process a contempt proceeding, despite the nature of the underlying case, "has some of the incidents of a trial for crime, and is quasi-criminal in nature." *Ex parte Caldwell*, 416 S.W.2d 382, 384 (Tex. 1967); see Attorney General Opinion JM-176 (1984) at 6. In JM-176, we said: "Whether classified

as civil or criminal, contempt proceedings invariably invoke certain aspects of the criminal process.” *Accord*, Attorney General Opinions JM-977 (1988); JM-403 (1985). Consequently, contempt proceedings are required to conform as nearly as practicable to proceedings in criminal cases. *Caldwell*, 416 S.W.2d at 384; Attorney General Opinion JM-176 (1984) at 6.

Furthermore, a person found in contempt of a child support order may be sentenced to either civil or criminal contempt, or both. The “distinction [between civil and criminal contempt] does not depend on whether the underlying case is civil or criminal, but on the nature and purpose of the court’s punishment.” *Ex parte Durham*, 921 S.W.2d 482, 485 (Tex. App.—Corpus Christi 1996, no writ). If a contempt order’s purpose is coercive, *i.e.*, designed to force compliance with a court order or to compensate a person injured by noncompliance, the contempt is civil. *Ex parte Johns*, 807 S.W.2d 768, 770 (Tex. App.—Dallas 1991, no writ). A sentence imposed for civil contempt is lifted once the underlying order is complied with. *Ex parte Hawkins*, 885 S.W.2d 586, 588 (Tex. App.—El Paso 1994, no writ). Thus it is said: “[T]he civil contemnor ‘carries the keys of [imprisonment] in [his] own pocket.’” *Id.*

Criminal contempt, on the other hand, is punitive in nature. Its purpose is to punish the contemnor for some past conduct or disobedience to a court order that constituted an affront to the dignity and authority of the court. *See Ex parte Mitchell*, 783 S.W.2d 703, 706 (Tex. App.—El Paso 1989, no writ). No subsequent compliance with the order can enable a criminal contemnor to avoid punishment for past action. *Ex parte Hawkins*, 885 S.W.2d 586, 588 (Tex. App.—El Paso 1994, no writ). It has been said that “[c]riminal contempt is a crime in the ordinary sense; it is a violation of the law, a public wrong which is punishable by fine or imprisonment or both.” *Bloom v. Illinois*, 391 U.S. 194, 201 (1968).

However, although both the proceeding and the punishment for criminal contempt are criminal in nature,

contempt proceedings are not criminal within the meaning of all the rules and definitions of criminal law. They are of a criminal nature merely because they are not properly civil proceedings, and because they involve the idea of punishment of unauthorized acts. They are proceedings *sui generis*. Contempts are not criminal offenses within the meaning of the Penal Code. And certainly, a contempt of court growing out of civil proceedings is not a criminal case.

13 TEX. JUR. 3D *Contempt* § 53 (footnotes omitted) (citing *Harbison v. McMurray*, 158 S.W.2d 284, 288 (Tex. 1942); *Ex parte Wolters*, 144 S.W. 531, 588 (Tex. 1911) (on reh’g); *Casey v. State*, 25 Tex. 380 (Tex. 1860); *Hudgens v. Yancey*, 284 S.W. 347 (Tex. Civ. App.—Fort Worth, 1926)); *see Ex parte Jones*, 331 S.W.2d 202, 204 (Tex. 1960) (“[A] contempt case is not a true criminal proceeding . . .”). Furthermore, community supervision for the purposes of chapter 509 means community supervision as defined in article 42.12, Code of Criminal Procedure. A judge may place a defendant on article 42.12 community supervision after a conviction or a plea of guilty or *no lo*

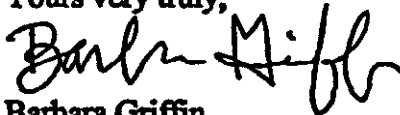
contendere, Code of Criminal Procedure § 3(a), pleas available only in prosecutions for criminal offenses.

For these reasons, we conclude that a criminal contemnor is not a criminal defendant for purposes of chapter 509. Consequently, state aid under chapter 509 may not be used for the housing in a community corrections facility of a person ordered to be confined there for contempt of a court order to pay child support.

S U M M A R Y

State aid provided to a community supervision and corrections department under the authority of chapter 509, Government Code, to serve the purposes of chapter 509 may be used only to provide services to criminal defendants. State aid under chapter 509 may not be used for the housing in a community corrections facility of a person ordered to be confined there for contempt of a court order to pay child support.

Yours very truly,



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Opinion Committee