



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2019-5

The Honorable David W. Prater
Oklahoma County District Attorney, District 7
320 Robert S. Kerr Ave, Suite 505
Oklahoma City, Oklahoma 73102

May 23, 2019

Dear District Attorney Prater:

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following questions:

1. **May the Department of Corrections expend funds derived from administrative fees that have been deposited by a local community sentencing system into the Oklahoma Community Sentencing Revolving Fund pursuant to 22 O.S.2011, § 988.9(B) without the prior consent of that local community sentencing system’s planning council?**
2. **May the Department of Corrections expend funds derived from administrative fees deposited by and credited to a local community sentencing system for the benefit of other community sentencing systems or for other Department of Corrections purposes?**
3. **May the Department of Corrections, in determining the amount of legislatively-appropriated funds apportioned to a local community sentencing system, take into account the amount of administrative fees collected by that local community sentencing system?**

I.
BACKGROUND

In 1999, the Oklahoma Legislature passed the Oklahoma Community Sentencing Act in its current form (the “Act”). 1999 Okla. Sess. Laws 1st Ex. Sess. ch. 4 (codified as amended at 22 O.S.2011 & Supp.2018, §§ 988.1–988.23 and 57 O.S.Supp.2018, § 557.2).¹ The Act “offers courts a variety of punishments and treatments to give offenders as an alternative to incarceration.” 2000 OK AG 55 at ¶ 4. A “community sentence” as defined by the Act is “a punishment imposed by the court as a condition of a deferred or suspended sentence for an eligible offender[.]” 22 O.S.Supp.2018, § 988.2(A)(2). “Eligible offenders” are those convicted of, or having entered a plea other than not

¹ A previous iteration of the Act was passed in 1997. *See* 1997 Okla. Sess. Laws ch. 133. That statute was repealed and replaced in its entirety in 1999. *See* 1999 Okla. Sess. Laws 1st Ex. Sess. ch. 4, 5.

guilty to, a felony offense and who meet certain evaluation and assessment requirements. *Id.* § 988.2(A)(8); *see also id.* § 988.18 (requiring sentencing judge to order assessment and evaluation prior to sentencing for any offender considered for community punishment). A community sentence may include, among other things, measures like community service, substance abuse and behavioral treatment, and restrictive housing options. *Id.* § 988.8(A). An offender serving a community sentence is not an inmate in the custody of the Department of Corrections (“DOC”), but rather is “in community custody within the county.” 22 O.S.2011, § 988.12(A).

To achieve its goals, the Act “[e]stablish[ed] a statewide community sentencing system,” 22 O.S.2011, § 988.3(2), which is defined as “a network of *all counties through their respective local community sentencing systems* serving the state judicial system and offering support services to each other through reciprocal and interlocal agreements and interagency cooperation.” 22 O.S.Supp.2018, § 988.2(A)(9) (emphasis added). The term “local community sentencing system” is defined as “the use of public and private entities to deliver services to the sentencing court for punishment of eligible felony offenders under the authority of a community sentence.” *Id.* § 988.2(A)(1). Each local community sentencing system (“Local System”) has a community sentencing planning council (“Planning Council”), which is “a group of citizens and elected officials specified by law or appointed by the Chief Judge of the Judicial District which plans the [Local System] and with the assistance of the Community Sentencing Division of [DOC] locates treatment providers and resources to support the [Local System].” *Id.* § 988.2(A)(4); *see also* 22 O.S.2011, § 988.5 (setting forth membership and operational requirements of Planning Councils). The Planning Council is responsible for, among other things, planning the Local System “with allocated funds and other available resources according to the provisions of the law and with the assistance of the Community Sentencing Division of [DOC.]” 22 O.S.Supp.2018, § 988.6(A).

Once the Planning Council has prepared a “detailed plan” for the Local System’s upcoming fiscal year, *see* 22 O.S.Supp.2018, § 988.6(A)(3), the plan is submitted to the Community Sentencing Division (the “Division”) of DOC for “state review and appropriate funding.” 22 O.S.2011, § 988.7(A); OAC 170:25-3-1(b) (requiring plan to be submitted by February 1 of each fiscal year in a format prescribed by the Division’s Deputy Director).² By statute, the plan must set forth Local System goals, including but not limited to:

- (1) identifying existing resources and additional resources needed,
- (2) projecting the number and types of offenders to be served,
- (3) identifying methods for allocating resources to support the services provided,
- (4) identifying any “special administrative structure” of, and specific providers used by, the Local System, and
- (5) describing and evaluating the extent of community participation and support of the Local System.

² The Division is broadly responsible for implementing and administering the Act “and any provisions of law relating to the operation and management of a statewide community sentencing system.” 22 O.S.2011, § 988.14(A). DOC has promulgated rules implementing the Act in Title 170, Chapter 25 of the Oklahoma Administrative Code.

22 O.S.2011, § 988.7(A). A Division employee assigned to the Local System—called a local administrator—is charged with assisting the Planning Council “in gathering and keeping accurate information about the jurisdiction to support the planning process.” *Id.* § 988.7(C); *see also id.* § 988.13(A)(2) (“The local administrator shall have the duty to . . . [a]ssist the planning council in the jurisdiction in identifying resources, collecting data on sentencing practices, and preparing the annual plan and supporting budget[.]”); *id.* § 988.15(4) (requiring the Division to provide technical and administrative support to a Local System in preparing and submitting its plan and budget).

Once the Local System submits its plan to the Division, the Division has 45 days to evaluate and propose modifications to the plan. 22 O.S.2011, § 988.7(B). However, so long as the plan “conforms with the purposes and goals” of the Act, it “shall not be modified or disapproved except when it requires more funding than is available to the local system.” *Id.* § 988.7(A); *see also* OAC 170:25-3-1(d), (e). The Division then must notify the Local System of its funding allocation by June 15 and, based on that allocation, the Local System submits its budget to the Division before finalizing agreements with its service providers for the fiscal year. 22 O.S.2011, § 988.7(B); *see also* OAC 170:25-9-1 (Local System budget “will include all expenses necessary to meet the plan objectives and will identify local resources utilized in addition to the funding requested”), 170:25-9-3(b) (“The Plan will specify how the funds will be expended to support or expand the Local System and how the program or service will further statewide goals.”).

Ultimately, each Local System is funded through a mixture of revenues, two of which are relevant to your questions. *First*, the Legislature appropriates funds directly to the Division, including “sufficient funds for [the] administrative support” of the Division itself and “a separate legislative appropriation for the implementation and operation of the statewide community sentencing system[.]” 22 O.S.2011, § 988.14(B); *see also* OAC 170:25-1-4 (“[The Division] will submit to the Legislature a statewide budget based upon all Local Planning Council budgets.”). *Second*, the Act requires offenders receiving a community sentence to pay, among others, “an administrative fee *to support the local system*,” not to exceed \$20.00 per month. 22 O.S.2011, § 988.9(B) (emphasis added). “Administrative fees when collected shall be deposited with [the Division] and credited to the [Local System] for support and expansion of the local community corrections system.” *Id.*; *see also* 2000 OK AG 55 at ¶ 2. All funds, regardless of the source, “accruing to the benefit of a community sentencing system *shall be deposited in the Oklahoma Community Sentencing Revolving Fund* created as provided in Section 557.1 of Title 57 of the Oklahoma Statutes, *and shall be credited to the local jurisdiction making such deposit.*” 22 O.S.2011, § 988.16(E) (emphasis added).

The Oklahoma Community Sentencing Revolving Fund (“Revolving Fund”) was “created in the State Treasury [as] a revolving fund for [the Division] . . . consist[ing] of all funds appropriated to it by the Legislature, grants, gifts, bequests and any other lawful money received for the benefit of the statewide community sentencing system.” 57 O.S.Supp.2018, § 557.2.³ “All funds received shall be deposited into the [Revolving Fund],” and “[a]ll monies accruing to the credit of [the Revolving Fund] *are hereby appropriated* and may be budgeted and expended by the Division for state funding to approved community sentencing systems established pursuant to the [Act].” *Id.* (emphasis added); *see also* OAC 170:25-9-3(a) (“All appropriated funds accruing from funds

³ While the Revolving Fund was originally created in Section 557.1 of Title 57, that provision was repealed and replaced in 1999 by Section 557.2 of Title 57. *See* 1999 Okla. Sess. Laws 1st Ex. Sess. ch. 4 & 5.

carried forward from prior years, fees, collected from offenders, grant awards to the Planning Councils, or funds which are otherwise received to support or expand specific Local Systems will be deposited in the [Revolving Fund] to the credit of the Local System and become an appropriated fund.”). Thus, the Division maintains a designated account within the Revolving Fund for each Local System, and the Division “pay[s] all expenditures directly on behalf of the Local System.” OAC 170:25-9-3(a), (c).

II. DISCUSSION

Your questions relate to the sources of funding provided by the Act that support Local Systems and the division of responsibility between the Division and a local Planning Council for the expenditure of those funds.

A. While the Division may expend administrative fee revenues deposited into the Revolving Fund by a Local System pursuant to 22 O.S.2011, § 988.9(B) without the consent of the Local System’s Planning Council, any such expenditure must be consistent with the terms of the Local System’s plan.

Your first question involves the process for expending administrative fee revenues collected by a Local System and transmitted to the Division for deposit into the Revolving Fund. The revenues are then credited to the Local System that collected them “for support and expansion of the local community corrections system.” 22 O.S.2011, § 988.9(B). Indeed, “[a]ny funds accruing to the benefit of a [Local System] *shall be deposited* into the [Revolving Fund], and *shall be credited* to the local jurisdiction making such deposit.” *Id.* § 988.16(E) (emphasis added).

The Act, and rules promulgated thereunder, set forth a comprehensive process for the budgeting and expenditure of funds by the Division for the Local System to which the funds are credited. As explained at length in Section I, *supra*, this begins with the Local System submitting a detailed plan to the Division that, among other things, identifies the Local System’s existing resources, the need for additional resources, projections for the number and type of offenders served, and methods for allocating resources to support the services included in the plan. 22 O.S.2011, § 988.7(A); *see also* OAC 170:25-9-3(b) (“The Plan will specify how [accrued] funds will be expended to support or expand the Local System[.]”). Preparation of the plan is aided by a dedicated Division employee, along with general technical and administrative support from the Division. 22 O.S.2011, §§ 988.13(A)(2), 988.15(4). The plan is then subject to review, proposed modification, and ultimate approval by the Division. *Id.* § 988.7(B). Once the plan is approved, the Local System is notified of its funding allocation, which then enables the Local System to formulate its budget—again with the assistance of Division staff—and finalize service agreements with local providers. *Id.* § 988.7.

It is clear from this extensive framework that any expenditure of funds allocated to a Local System—regardless of their source—must conform to the plan and budget submitted by the Local System and approved by the Division. However, nothing in the Act or rules promulgated thereunder requires the Division to obtain advance consent of a Local System’s Planning Council before making such expenditures. Where this additional requirement is omitted from the statute,

we are not at liberty to insert it. *See, e.g., Cities Serv. Gas Co. v. Peerless Oil & Gas Co.*, 1950 OK 4, ¶ 7, 220 P.2d 279, 293 (“When the language is plain, we have no right to insert words or phrases so as to incorporate in the statute a new and distinct provision.”) (quoting *United States v. Temple*, 105 U.S. 97, 99 (1881) (Halley, J., dissenting)).

Moreover, such a requirement would be unnecessary. Because the Act, and the rules promulgated thereunder, only permit expenditures as provided by the plan and budget that are proposed by Local System and approved by the Division, any such expenditure would already have the consent of the Local System’s Planning Counsel.

B. Administrative fees collected by a Local System and credited to that Local System may be expended only for the support and expansion of that Local System.

Next, you ask whether administrative fees collected by a Local System may be used by the Division for the benefit of other Local Systems or for other DOC purposes. The answer lies in the plain language of the Act. The Act requires that administrative fees collected by a Local System be transmitted to the Division, deposited into the Revolving Fund, and “credited” to the Local System that collected them “for support and expansion of the local community corrections system.” 22 O.S.2011, § 988.9(B); *see also id.* § 988.16(E). “Credited” in this context means “to enter upon the credit side of an account, [or] place to the credit of – opposed to debit.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 533 (3d ed. 2002).⁴ Because the Act requires administrative fees to be credited to the Local System that collected them for the “support and expansion” of that system, it is impermissible for the Division to expend administrative fee revenues for any other purpose.

C. The Department of Corrections may not consider the amount of administrative fees collected by a Local System in determining the allocation of state-appropriated funds to that Local System.

Finally, you ask whether the Division may take into account the amount of administrative fees collected by a Local System when determining the legislatively-appropriated funds that are allocated to that Local System. In essence, your question is whether the Division could reduce a Local System’s allocation of other funds if that Local System collects significant sums in administrative fees.

“The Division has extensive authority relating to the administration of the [statewide community sentencing] system, including the allocation of funds to the local systems.” 2004 OK AG 2 at ¶ 3. In that regard, the Act directs the Division “to allocate and disburse appropriated funds to [Local Systems] through an appropriate funding method.” 22 O.S.2011, § 988.15(6). The Act further requires that the Division “promulgate rules for [Local Systems] *based upon objective criteria for allocation of state-appropriated funds to local systems* for day-to-day operation during a fiscal year[.]” *Id.* § 988.16(A) (emphasis added).

⁴ Indeed, the Division has promulgated a rule to facilitate this process. *See* OAC 170:25-9-2(a) (“The Division will establish a designated account for each Local System. Credits to each account will include the share of the legislative appropriations and any discretionary funds for each Local System.”).

The Division has promulgated such a rule, which provides that “[f]unds will be disbursed [to Local Systems] based on data reflecting local and statewide felony convictions, the characteristics of offenders receiving a community sentence and the sentencing practices of the courts.” OAC 170:25-1-4. The Division has identified no other criteria upon which the allocation of appropriated funds to Local Systems is based. In construing administrative rules and regulations, we “do not create exceptions or impose restrictions not contained in an agency's rules.” *McClure v. ConocoPhillips Co.*, 2006 OK 42, ¶ 25, 142 P.3d 390, 398.⁵ Therefore, the Division may not consider the amount of administrative fees collected and credited to a Local System in allocating and disbursing appropriated funds to that Local System.

⁵ This office considered the same rule in Attorney General Opinion 2004-2. While the question at issue in that opinion was slightly different, the opinion concluded that “[t]he method adopted . . . in OAC 170:25-1-4 must be uniformly applied – that is, in allocating funds to local systems, the Division must consider data reflecting local and statewide felony convictions, the characteristics of offenders receiving a community sentence and the sentencing practices of the courts.” 2004 OK AG 2 at ¶ 14. That opinion recognized that uniform application of these criteria to all Local Systems “may impact local systems differently.” *Id.* at ¶ 15.

It is, therefore, the official Opinion of the Attorney General that:

- 1. The Oklahoma Community Sentencing Act (“Act”) sets forth a comprehensive framework for a Local Community Sentencing System (“Local System”) and the Community Sentencing Division of the Department of Corrections (“Division”) to jointly come up with a plan and budget to provide services contemplated by the Act. While administrative fees collected by a Local System and transmitted to the Division pursuant to 22 O.S.2011, § 988.9(B) may be expended by the Division without approval from the Local System’s planning council, any such expenditure must be (i) “for the support and expansion of the local community corrections system” and (ii) consistent with the terms of the plan and budget submitted by the Local System and approved by the Division. 22 O.S.2011, § 988.6(A)(1), (3); OAC 170:25-9-3(b).**
- 2. Administrative fees collected by a Local System, deposited with the Division, and credited to that Local System may be expended only for the support and expansion of that Local System. 22 O.S.2011, §§ 988.9(B), 988.16(E); 57 O.S.2011, § 557.2.**
- 3. The Division has by rule adopted “objective criteria for allocation of state-appropriated funds to local systems for day-to-day operation during a fiscal year[.]” 22 O.S.2011, § 988.16(A); see OAC 170:25-1-4. Under that rule, the Division is not permitted to consider the amount of administrative fees collected by a Local System in determining the Local System’s allocation of state-appropriated funds.**

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