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March 14, 2003

Opinion No. 03-028

Allocation of fine and court cost payments in criminal cases to the Drug Court Fund

QUESTION

May a Criminal Court direct a portion of defendants' fine and court cost payments in criminal cases to the Drug Court Fund account?

OPINION

No, because Tenn. Code Ann. § 40-25-135 and Tenn. Code Ann. § 39-17-420 do not authorize the placement of court cost and fine payments respectively into the account of a community corrections program, as authorized under Tenn. Code Ann. § 40-36-101, et seq. However, a trial court may assess to any criminal offender participating in a community correction program, such as a drug court program, an additional fee, beyond the statutory monthly supervision fee, to offset the costs of the program.

ANALYSIS

Tennessee Code Annotated § 40-25-135 delineates the proper procedures for the remission and distribution of payments by criminal defendants for court costs in criminal cases, and this section does not authorize the division of a portion of cost payments into a separate fund. Rather, cost payments must go to pay the actual costs incurred in an individual case.

As to fines imposed for drug offenses under the Tennessee Drug Control Act of 1989, Tenn. Code Ann. § 39-17-420 provides in pertinent part:

> All fines and forfeitures of appearance bonds received because of a violation of any provision of this part and the proceeds of goods seized and forfeited under the provisions of § 53-11-451 and disposed of according to law, ***shall*** be accounted for in a special revenue fund of the jurisdiction that initiated the arrest. . . Moneys in the special revenue fund may be used only for the following purposes:
>
> (A) Local drug enforcement program;
> (B) Local drug education program;
> (C) Local drug treatment program; and
> (D) Nonrecurring general law enforcement expenditures.

> The chief law enforcement officer and the mayor of a municipality (or other chief executive officer of a metropolitan government) shall recommend a budget for the special revenue fund, to be approved by the legislative body of the municipality according to law. The chief law enforcement officer of a county shall recommend a budget for the special revenue fund, to be approved by the legislative body of the county according to law.

Tenn. Code Ann. § 39-17-420(a)(1) (2002) (emphasis added).

"The cardinal rule of statutory construction is to follow the plain meaning of the statute where the language is clear and unambiguous on its face." *Jackson v. General Motors Corp.*, 60 S.W.3d 800, 804 (Tenn. 2001). Therefore, fines collected for drug offenses must go into a special revenue fund for use by the applicable jurisdiction, through its legislative body, to support the above programs or expenditures. The trial court does not have express statutory authority to direct the court clerk to place a portion of such fine payments into a separate Drug Court Fund account.

Although a trial court may not direct cost or fine payments into a Drug Court Fund account, a trial court does have the authority under Tenn. Code Ann. § 40-36-306(f), regarding the finances of a community corrections program, to assess additional fees to individual participants in a community corrections program, such as a drug court program, to offset the actual costs of the individual program:

> In addition to any other fees imposed by this section, the trial court may assess an additional fee against any offender sentenced to participate in a community corrections program, either as a community corrections sentence or as a condition of probation, to offset the cost of the program; provided, that the program is one that has been certified by the board of probation and parole as meeting promulgated criteria relating to achievement of goals and cost of the program.

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