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Opinion No. 05-118

District Attorneys General — Contract With Debt Collection Agency

QUESTION

Does a district attorney general have the express or implied authority to enter into a contingency fee contract with a debt collection agency to recover fines and costs assessed in criminal cases?

OPINION

Yes, the district attorney general has the authority to contract with a debt collection agency. When a district attorney general is responsible for collecting fines, costs and litigation taxes assessed in criminal cases, the county purchasing agent, at the request of the district attorney general, uses normal county competitive bidding requirements to select and retain the collections agent. The district attorney general then contracts with the agent selected in the competitive bidding process.

ANALYSIS

Under Tenn. Code Ann. § 40-24-105(c), a district attorney general or the criminal or general sessions court clerk may retain an agent to collect fines, costs and litigation taxes (collectively, “costs”) assessed in criminal cases. If the district attorney general and the criminal court clerk cannot agree on who will collect costs, the district’s presiding judge or a general sessions judge makes the decision. Then, the official responsible for collecting costs must ask the county purchasing agent to utilize normal competitive bidding procedures to select and retain the collection agent. Tenn. Code Ann. § 40-24-105(c).

Tenn. Code Ann. § 40-24-105(c) does not specify which official will contract with the collections agent selected in the bid process. We believe the statutory language places that authority with the official responsible for collecting costs. To “retain” means “to engage the services of,” “to keep in one’s pay or service.” *Black’s Law Dictionary* (6th ed.); *Merriam Webster* (on-line edition). From these definitions, one may conclude that “retain” means to contract under Tenn. Code Ann. § 40-24-105(c). Thus, if the district attorney is responsible for collecting costs, he may contract with the debt collections agent selected in the county bidding process.

Tenn. Code Ann. § 40-24-105 neither authorizes nor prohibits a contingency fee contract.

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We must assume that the responsible official — whether district attorney or court clerk — will follow applicable law and, to the extent allowed by law, contract in a way that will maximize collections.

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