



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

LD C. MANN
ATTORNEY GENERAL

February 21, 1939

Hon. L. P. Heard
County Auditor
Bell County
Belton, Texas

Dear Sir:

Opinion No. 0-329
Re: Should Sheriff or Commissioners'
Court supervise purchase of food and feed-
ing of prisoners?

Your request for an opinion on the above stated question has been received by this office.

Your letter reads in part as follows:

"In some counties they contract with certain parties to furnish meals for the prisoners at so much per meal, in other counties the Commissioners' Court purchases the supplies for this maintenance on competitive bids while in other counties the sheriff does all of the buying as he sees fit.....Will you please advise me what, in your opinion, is the proper method and procedure for the handling of the feeding of the prisoners and their maintenance; that is, whether the sheriff should purchase all of the supplies, or should the Commissioners' Court take over the entire management of the jail, with the exception of course, of being responsible for the prisoners?"

Article 1040, Code of Criminal Procedure reads as follows:

"For the safe keeping, support and maintenance of prisoners confined in jail or under guard, the Sheriff shall be allowed the following charges:

"1. For the safekeep of-each prisoner for

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each day the sum of fifteen cents, not to exceed the sum of two hundred dollars per month.

"2. For support and maintenance, for each prisoner for each day such an amount as may be fixed by the commissioners court, provided the same shall be reasonably sufficient for such purpose, and in no event shall it be less than forty cents per day nor more than seventy-five cents per day for each prisoner. The net profits shall constitute fees of office and shall be accounted for by the sheriff in his annual report as other fees now provided by law. The sheriff shall in such report furnish an itemized verified account of all expenditures made by him for feeding and maintenance of prisoners, accompanying such report with receipts and vouchers in support of such items of expenditure; and the difference between such expenditures and the amount allowed by the commissioners court shall be deemed to constitute the net profits for which said officer shall account as fees of office.

"3. For necessary medical bill and reasonable extra compensation for attention to a prisoner during sickness, such an amount as the commissioners court of the county where the prisoner is confined may determine to be just and proper.

"4. For reasonable funeral expenses in case of death."

On May 31, 1933, Hon. James N. Neff, County Attorney, Orange, Texas, submitted to this Department almost the identical question presented in your inquiry and on June 6, 1933, Hon. Homer C. DeWolfe, Assistant Attorney General, rendered an opinion construing Article 1040, Code of Criminal Procedure, holding in effect that the sheriff has the authority to feed prisoners to the exclusion of anyone else and that the Commissioners' Court has

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no authority to contract for feeding of prisoners on competitive bids.

It is too well settled to require the citation of authority that the Commissioners' Court is a court of limited jurisdiction and has only such authority as is given by the Constitution and statutes, either expressly or by necessary implication. This Department is unaware of any statutory provision or other authorities authorizing the Commissioners' Court to receive bids for the feeding of prisoners. Article 1040, Code of Criminal Procedure, supra, expressly confers the duty of caring for and feeding of prisoners upon the sheriff.

It is an elementary rule of construction that where the statute provides the means and manner in which a particular thing or duty is to be performed, it must be performed in that manner and no other. Texas Jurisprudence, Vol. 39, page 156.

You are respectfully advised that it is the opinion of this Department that the sheriff has the authority and is authorized by statute to feed and purchase all supplies necessary for the maintenance of prisoners and that such authority is not conferred upon the Commissioners' Court, either directly or indirectly.

Trusting that the foregoing answers your inquiry, I remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

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Assistant

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APPROVED:

George B. Mason
ATTORNEY GENERAL OF TEXAS *Mpl*