



**THE ATTORNEY GENERAL
OF TEXAS**

March 10, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Jack Crump
Acting Executive Director
Texas Commission on Jail
Standards
P. O. Box 12985
Austin, Texas 78711

LO-89-22

Dear Mr. Crump:

On behalf of the Texas Commission on Jail Standards your predecessor requested our opinion on the application of article 5115d, V.T.C.S., subsection (h), to a contract between the Reeves County Commissioners Court and a private vendor to operate the Reeves County Law Enforcement Center. Article 5115d, V.T.C.S., provides in part:

(c) The commissioners court of a county may contract with a private vendor to provide for the financing, design, construction, leasing, operation, purchase, maintenance, or management of a jail, detention center, work camp, or related facility.

. . . .

(h) The commissioners court of a county may not convert a facility into a correctional facility operated by a private vendor if, before the effective date of this article, the facility is:

(1) operated as a correctional facility by the county; or

(2) being constructed by the county for use as a correctional facility.

V.T.C.S. art. 5115d. The effective date of article 5115d(c)-(i), V.T.C.S., was April 14, 1987. Acts 1987, 70th Leg. ch. 18, § 6, at 51.

We are informed that Reeves County operated the Reeves County Law Enforcement Center from May 1, 1986, until August 31, 1988, and used this facility primarily to house federal prisoners under a contract with the federal Bureau of Prisons. See 18 U.S.C. § 4002. The sheriff was responsible for the operation of this facility, and your agency inspected it as a part of the county jail system. On September 1, 1988, the Reeves County Commissioners Court, acting under the authority of article 5115d, V.T.C.S., contracted with a private vendor to assume the management of the facility. You ask whether this contract is valid under article 5115d, V.T.C.S.

The Reeves County Law Enforcement Center was "operated as a correctional facility by the county" before the April 14, 1987, effective date of article 5115d, V.T.C.S. It was a county-operated correctional facility on September 1, 1988, when the commissioners court of Reeves County contracted with a private vendor to manage it. See generally, Attorney General Opinion JM-960 (1988) (prohibition in article 5115d(h), V.T.C.S., does not apply to building formerly operated as correctional facility if such use has been terminated). In our opinion, subsection (h) of article 5115d, V.T.C.S., expressly prohibited the commissioners court from entering into the contract with a private vendor to manage the Reeves County Law Enforcement Center. The Reeves County Commissioners Court had no authority to convert the law enforcement center into a privately operated correctional facility, because the county had operated it as a correctional facility prior to the effective date of that statute.

It has been suggested, however, that this is a contract for "management" and not "operation" of the law enforcement center, so that the commissioners court has not converted the center into "a correctional facility operated by a private vendor." V.T.C.S. art. 5115d(h) (emphasis added). This argument is based on a comparison of the wording of subsection (h), which refers to operation of a facility by a private vendor, and the wording of subsection (c), which reads as follows:

(c) The commissioners court of a county may contract with a private vendor to provide for the financing, design, construction, leasing, operation, purchase, maintenance, or management of a jail, detention center, work camp, or related facility.

V.T.C.S. art. 5115d.

Subsection (e), however, states that a contract entered into under article 5115d, V.T.C.S., must require the private vendor "to operate the facility in compliance with minimum standards of construction, equipment, maintenance, and operation of jails promulgated by the Commission on Jail Standards." V.T.C.S. art. 5115d(e) (emphasis added). See also V.T.C.S. art. 5115.1, § 1 (minimum standards of construction, maintenance, and operation for county jails implemented by establishing Commission on Jail Standards). An examination of other subsections of article 5115d, V.T.C.S., suggests that the legislature did not have in mind a sharp distinction between management and operation of a facility.

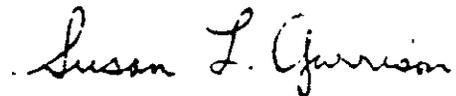
Moreover, the terms of the contract themselves show that it is a contract for operation of a correctional facility under article 5115d(h), V.T.C.S. The private vendor is responsible for providing security for all inmates when at the center and during medical appointments and emergencies. Professional Management Agreement between Corrections Corporation of America and Reeves County, Texas [hereafter "agreement"] § 7.10. The vendor also agrees to meet all applicable state and federal laws, requirements, and court orders, while the county judge and sheriff serve as monitors responsible for ensuring compliance with certification requirements of the Texas Commission on Jail Standards and the Texas Commission on Law Enforcement Officer Standards and Education. Id. §§ 7.02; 7.03.; see V.T.C.S. art. 5115.1, Gov't Code ch. 415. Responsibility for maintaining the facility, grounds, and equipment is also placed on the private vendor. Agreement, articles 5 & 6. See also id. art. 1 (operational costs are all costs directly associated with the operation of the center, including, but not limited to, utilities, inmate medical care, inmate food, supplies, local inmate transportation, employee salaries and benefits, maintenance of the facility, supplies, equipment and property insurance); § 3.02 (county will reimburse vendor for actual operational costs). The contract vests expansive responsibility for the custody and care of inmates and for the facility itself in the vendor, and we conclude that it is a contract for operation of a correctional facility by a private vendor.

We conclude that article 5115d(h), V.T.C.S., bars the county from entering into the contract in question.

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A contract entered into between the Reeves County Commissioners Court and a private vendor to operate the Reeves County Law Enforcement Center is invalid because it is prohibited by subsection (h) of article 5115d, V.T.C.S.

Very truly yours,



Susan L. Garrison
Assistant Attorney General
Opinion Committee

APPROVED: Sarah Woelk, Chief
Letter Opinion Section

SG/er

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