



**THE ATTORNEY GENERAL
OF TEXAS**

July 11, 1990

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Travis S. Ware
Criminal District Attorney
Lubbock County Courthouse
P. O. Box 10536
Lubbock, Texas 79408

10-90-42

Dear Mr. Ware:

You ask whether a sheriff in a county with a population of more than 200,000 has authority to operate a jail commissary.

In 1989 the legislature enacted the following provision, which governs commissaries in counties with a population of under 200,000:

(a) The sheriff of a county with a population of under 200,000 according to the last federal census may operate, or contract with another person to operate, a commissary for the use of the prisoners committed to the county jail. The commissary must be operated in accordance with rules adopted by the Commission on Jail Standards.

(b) The sheriff:

- (1) has exclusive control of the commissary funds.
- (2) shall maintain commissary accounts showing the amount of proceeds from the commissary operation and the amount and purpose of disbursements made from the proceeds; and
- (3) shall accept new bids to renew contracts of commissary suppliers every five years.

(c) The sheriff may use commissary proceeds only to:

(1) fund, staff, and equip a program addressing the social needs of the county prisoners, including an educational or recreational program and religious or rehabilitative counseling;

(2) supply county prisoners with clothing, writing materials, and hygiene supplies;

(3) establish, staff, and equip the commissary operation; or

(4) fund, staff, and equip a library for the educational use of county prisoners.

(d) At least once each quarter of a county's fiscal year, or more often if the county auditor desires, the auditor shall, without advance notice, fully examine the jail commissary accounts. The auditor shall verify the correctness of the accounts and report the findings of the examination to the commissioners court of the county at its next term beginning after the date the audit is completed.

Acts 1989, 71st Leg., ch. 980, at 4056. You ask whether section 351.0415 precludes sheriffs in larger counties from operating jail commissaries.

Section 341.0415 was not necessary to authorize commissaries for county jails since existing rules of the Commission on Jail Standards require county jails to provide a commissary or equivalent services. 37 T.A.C. §§ 259.32; 259.132; 259.220; 259.321; 261.21; 261.121; 261.209; see also 37 T.A.C. ch. 291; Attorney General Opinions JM-1121 (1989); MW-439 (1982); MW-143 (1980); C-67 (1963).

The purpose of section 351.0415 appears to have been to increase the sheriff's authority in regard to commissary funds in counties with a population under 200,000.¹

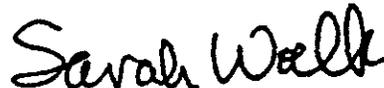
1. As originally introduced the provision applied to
(Footnote Continued)

Section 2 of the bill enacting section 351.0415 provided: "This Act takes effect September 1, 1989, and on that date, the operation and unexpended proceeds of any existing county jail commissary shall be delivered to the sheriff of the county in which the commissary is located."

We do not think that the fact that section 351.0415 increases the authority of sheriffs in counties with a population of less than 200,000 has the effect of diminishing the existing authority of sheriffs in larger counties. We conclude, therefore, that as keeper of the county jail, the sheriff in a county of any size has administrative authority over a jail commissary. See Attorney General Opinions MW-439 (1982); MW-143 (1980); H-1190 (1978); C-67 (1963).

You also ask whether a sheriff in a county with a population of 200,000 or more may contract with another person to operate a jail commissary. Although your question is subject to several interpretations, we assume you are asking whether the sheriff may hire an employee to operate a jail commissary. The commissioners court has authority to authorize positions and salaries for positions in the offices of elected county officials, but the commissioners court does not have authority to determine what individuals fill those positions. Local Gov't Code §§ 151.001, 151.004.

Very truly yours,



Sarah Woelk, Chief
Letter Opinion Section

APPROVED: Rick Gilpin, Chairman
Opinion Committee

SW/er

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(Footnote Continued)

all counties. H.B. 669 (filed version), 71st Leg. (1989). The Senate added the language limiting the application of the provision to counties with a population under 200,000. H.B. 669 (Senate Committee substitute), 71st Leg. (1989).