



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

March 14, 1996

Mr. Jack E. Crump
Executive Director
Texas Commission on Jail Standards
P.O. Box 12985
Austin, Texas 78701

Letter Opinion No. LO96-032

Re: Authority of the Commission on Jail Standards by rule to make county jail telephone services for inmates part of the jail commissary services provided for in Local Government Code section 351.0415 (ID# 35191)

Dear Mr. Crump:

You ask about the authority of the Commission on Jail Standards "to incorporate inmate telephones into administrative standards dealing with [the county jail] Commissary." Statutory provision for county jail commissaries is found in Local Government Code section 351.0415, which reads:

(a) The sheriff of a county may operate, or contract with another person to operate, a commissary for the use of 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;

(3) shall accept new bids to renew contracts with 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 county fiscal year, or more often if the commissioners court 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.

You ask specifically:

- (1) Does any existing definition of commissary include inmate telephones?
- (2) Does the commission have the authority to place inmate telephones under commissary privileges?
- (3) If so, would this require that funds generated in this matter be placed in a commissary account created under provisions of Section 351.0415, Local Government Code?

You advise that pay telephones in county jails "in many instances generate a large sum of money." If the provision of telephones is made part of the jail commissary scheme under section 351.0415, the funds generated would be under the control of the sheriff pursuant to that section. Otherwise, such funds must be paid over to the county treasurer. *See* Local Gov't Code § 113.021 (county officers to pay over county money, from whatever source derived, to county treasurer); Attorney General Opinion DM-19 (1991).

Section 351.0415, adopted in 1989, Act of May 28, 1989, 71st Leg., R.S., ch. 980, 1989 Tex Gen. Laws 4056, is the first and only Texas statutory provision dealing with jail commissaries. The commission since 1976, however, has had rules in force providing for the operation of jail commissaries, and, moreover, treating jail telephone services as distinct. *See* 1 Tex. Reg. 3599 (1976) (commission rule providing that each detention facility was to implement a policy, approved by the commission, governing, among other things, telephone privileges and commissary privileges) (codified at 37 T.A.C. §§ 291.1, .3 (respectively, "Inmate Telephone Plan" and "Inmate Commissary Plan")).¹

¹*See also* Act of May 30, 1975, 64th Leg., R.S., ch. 480, 1975 Tex. Gen. Laws 1278 (Commission on Jail Standards created with authority to establish standards for operation of jails and care of prisoners); Attorney General Opinion MW-439 (1982) (sheriff has no independent right to contract for jail commissary); Attorney General Opinion MW-143 (1980) (commission rule providing for operation of commissaries gives sheriffs authority to operate commissaries); Attorney General Opinion C-67 (1963) (although no statutory authority for jail commissary existed at that time, sheriff's authority to supply

Attorney General Opinion DM-19, in response to a question from the Montgomery County Attorney, concluded that jail telephone revenues were not commissary funds under section 351.0415 and should thus be paid over to the county treasurer rather than retained in the control of and spent by the sheriff pursuant to the section 351.0415 commissary provisions. Attorney General Opinion DM-19 (1991) at 3. That opinion reasoned that “[b]ecause the term ‘commissary’ initially appeared in the rules of the Commission on Jail Standards and because section 351.0415 was apparently enacted to clarify the application of those rules, the rules of the commission are an appropriate source to rely on in determining the scope of the term ‘commissary’ in section 351.0415.” *Id.* at 2. Since commission rules treated and had always treated telephone privileges separately from the commissary, the opinion concluded that provision of telephones was not part of the commissary scheme under section 351.0415. *Id.*

As indicated in Attorney General Opinion DM-19, we think it reasonable to suppose that the legislature, in adopting section 351.0415, did so in the understanding, based on the distinction between telephone and commissary privileges made in commission rules since 1976, that telephone privileges were not part of the commissary scheme it was providing for in that section. Furthermore, apropos of your first question, we note that *Webster's* defines the term “commissary” as “one delegated by a superior to execute a duty or an office,” “a store for equipment and provisions; *esp[ecially]*: a supermarket operated for military personnel,” “food supplies,” and “a lunchroom, *esp[ecially]* in a motion picture studio.” WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 265 (1990). In view of these definitions of the term “commissary,” we think the legislature may reasonably have understood a “commissary” not to include provision of telephone service. Accordingly, we conclude that the commission is not authorized now to adopt a rule to include telephone service within the commissary services provided for in section 351.0415. We do not, therefore, reach your third question, which is premised on the commission's having such authority.

You also ask generally with respect to county jail commissaries:

Contracts are normally the prerogative of the Commissioner's Court, however, it appears that commissary contracts are a responsibility of the sheriff. As a result, should the Commission effect specific distribution of funds through administrative standards? Does the Jail Commission have authority to develop administrative standards based on lack of a specific statute or is legislative clarification appropriate?

(footnote continued)

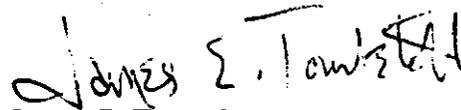
“wants” of inmates authorized him to sell toilet articles and other items to inmates). Section 351.0415 appears to have changed the result of Attorney General Opinion MW-439 by providing that the sheriff rather than the commissioners could contract for the commissary.

We are not sure that we understand what you mean by "specific distribution" of funds. The legislature, in subsection (c) of section 351.0415, quoted above, has made rather detailed provisions as to what the sheriff may spend commissary proceeds on. If by "specific distribution" you mean that the commission would impose by rule more requirements as to the specific proportions in which commissary funds are to be spent on subsection (c) items, we believe that, had the legislature intended that the commission have such authority it would have given a clearer indication of this intent. Section 351.0415 on its face indicates to us that the legislature intended that the sheriff have discretion in this area consistent with the subsection (c) limitations. Thus, although subsection (a) provides generally that the "commissary must be operated in accordance with rules adopted by the Commission," we do not believe the commission has authority to impose more specific requirements by rule than those set out in subsection (c) as to what the sheriff may spend commissary funds on. This is an area in which we believe the commission should await legislative clarification rather than itself undertake to provide for by rule.

S U M M A R Y

The Commission on Jail Standards is not authorized to include, by rule, telephone service within the commissary services provided for in section 351.0415, Local Government Code. Nor is the commission authorized to impose by rule more specific requirements as to what commissary proceeds may be spent on than those set out in section 351.0415.

Yours very truly,



James E. Tourtelott
Assistant Attorney General
Opinion Committee