



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 9, 1997

The Honorable Randall W. Reynolds
District Attorney
143rd Judicial District
P.O. Box 150
Pecos, Texas 79772

Letter Opinion No. 97-108

Re: Whether interest from federal inmate trust accounts in county jail housing federal inmates pursuant to contract with the federal government may be used for benefit of inmate population (ID# 39483)

Dear Mr. Reynolds:

You tell us that Reeves County entered into a contract with the United States Bureau of Prisons for the confinement of federal inmates in the Reeves County Detention Center. We understand that the contract, which we have not reviewed, requires interest from federal inmate trust accounts to be placed in a "Special Projects Account" used to supply recreational and educational programs for the benefit of the inmate population as a whole. You ask whether the county may deposit trust fund interest into such an account in light of Attorney General Opinion DM-282, in which this office concluded that interest on funds held in trust for a county inmate by a county sheriff is the property of the inmate and must be paid to the inmate. We conclude that the county may comply with the contract provision you have described.

The answer to your question depends in part upon the law applicable to county jails housing only federal prisoners. In Letter Opinion 96-151, this office examined the state's authority to regulate a private correctional facility intended to house prisoners from jurisdictions other than Texas, including federal prisoners.¹ In the course of considering that issue, we determined that state, local, and private institutions housing only federal prisoners are not necessarily free from state regulation.² Letter Opinion No. 96-151 (1996) at 3. Instead, regulatory authority over state, local, and private jails housing federal prisoners can be determined by examining the statutes that authorize the jail to operate, the statutes that authorize the federal government to contract with state and local governments and private entities, and the contract entered into pursuant to those statutes. *See id.* at 5; *see also United States v. Jiminez*, 454 F. Supp. 610, 611-12 (M.D. Tenn. 1978).

¹Subsequent to the issuance of Letter Opinion 96-151, in 1997 the Texas Legislature enacted a bill giving the Texas Commission on Jail Standards regulatory authority over privately operated jails housing prisoners from this state and other states. *See* Act of May 12, 1997, 75th Leg., R.S., ch. 259, 1997 Tex. Gen. Laws 1196, 1196.

²In reaching this conclusion, we withdrew Attorney General Opinion DM-404, in which we had held that the Commission on Jail Standards could not regulate a city detention center that housed only federal prisoners. Letter Opinion No. 96-151 (1996) at 3 n.17.

Federal law requires the Bureau of Prisons, under the direction of the Attorney General of the United States, to “provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States.” 18 U.S.C. § 4042. At the same time, the Attorney General is authorized to contract with the “proper authorities of any State, Territory, or political subdivision thereof” for the imprisonment of federal inmates. *Id.* § 4002. The governmental entity with which the Attorney General contracts is normally regarded as an independent contractor, with day-to-day operations of the facility in the hands of the governmental entity. See *Logue v. United States*, 412 U.S. 521, 529 (1973); *Jiminez*, 454 F. Supp. at 611-12; *Brown v. United States*, 374 F. Supp. 723, 727 (E.D. Ark. 1974); Letter Opinion No. 96-151 (1996) at 3.

By contracting for the housing of its prisoners, the federal government is not excused from its obligations under federal law to “provide suitable quarters and provide for the safekeeping, care, and subsistence” of its prisoners. 18 U.S.C. § 4042; see *United States v. Muniz*, 374 U.S. 150, 164-65 (1963) (holding that duty of care owed by Bureau of Prisons to federal prisoners is fixed by federal statute independent of inconsistent state rule); *Brown*, 374 F. Supp. at 728-29 (holding that federal government may be found negligent for contracting with substandard state jail). A federal prisoner housed in a county jail is still a federal prisoner, and remains legally in the custody of the federal government. See *United States v. Viger*, 530 F.2d 846, 847 (9th Cir. 1976) (federal prisoner who escapes from county jail housing prisoner pursuant to contract with Attorney General escapes from custody of Attorney General); Gov’t Code § 511.001(5) (“‘Federal prisoner’ means a person arrested for, charged with, or convicted of a violation of federal law.”). Because responsibility for federal prisoners remains with the federal government irrespective of where the prisoners are housed, a contract between a county and the federal government for the housing of federal prisoners normally requires the county to adhere to federal laws and regulations regarding the care and custody of prisoners.³ See, e.g., *Logue v. United States*, 412 U.S. at 529-30; *Jiminez*, 454 F. Supp. at 611.

A county jail’s agreement to abide by federal law does not free it from state regulation, however. County jails⁴ in Texas are regulated by the Texas Commission on Jail Standards, even when housing only federal prisoners. Gov’t Code § 511.0094.⁵ The commission is directed to adopt rules and procedures establishing, among other things, “standards for the custody, care, and treatment of prisoners” and “requirements for programs of rehabilitation, education, and recreation

³In this case, you tell us that the county’s contract with the federal Bureau of Prisons requires the county to hold federal inmate funds in trust and place the interest earned on the funds in a “Special Projects Account” for the benefit of all of the prisoners. Although we know of no federal statute or regulation specifically authorizing such an account, we will assume for purposes of this opinion that the account is permitted by federal law.

⁴A “county jail” is a “facility operated by or for a county for the confinement of persons accused or convicted of an offense.” Gov’t Code § 511.001.

⁵Government Code section 511.0094 reads, in part: “The provisions of [chapter 511] do not apply to a correctional facility, other than a county jail, contracting to house only federal prisoners and operating pursuant to a contract between a unit of the federal government and a county, a municipality, or a private vendor.”

in county jails.” *Id.* § 511.009(a). A county jail housing federal prisoners pursuant to contract must, at a minimum, comply with state law and regulations with respect to the custody, care, and treatment of federal prisoners. Where custody issues are not addressed by state law or the Commission on Jail Standards, or where federal law or contract terms exceed the requirements of state law, a county may comply with federal law or the terms of the contract.

A commission rule requires the county officer receiving an inmate into the jail to “record and store the inmate’s property as it is taken.” 37 T.A.C. § 265.10. However, as we found in DM-282, “[n]o statute or rule discusses whether a sheriff may place an inmate’s money into an interest-bearing account,” Attorney General Opinion DM-282 (1994) at 4, nor does any statute or rule dictate to whom interest on such an account is payable, *see id.* at 5. We concluded based on the absence of statutory or regulatory direction that the county sheriff may use his or her discretion to decide whether to place inmate funds in an interest bearing account. *Id.* at 4. Relying on common-law trust principles, we further concluded that if the funds are held in trust by a county sheriff for an inmate, the interest on the funds constitutionally is property of and due the inmate.⁶ *Id.* at 5 (citing 35 D. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 14.11, at 526 (Texas Practice 1989); *Sellers v. Harris County*, 483 S.W.2d 242, 243 (Tex. 1972)).

In this case, a contract provision directs the county’s use of interest earned on federal inmate trust funds.⁷ Because the provision is not inconsistent with any Texas statute or regulation regarding a county jail’s establishment of inmate trust fund accounts or the use of interest earned on such accounts, we hold that a county contracting with the federal government may agree to abide by a contract term requiring the county to interest earned on inmate trust fund accounts for prison-wide recreational and educational programs.⁸ County inmate funds remain subject to the conclusions reached by this office in Attorney General Opinion DM-282.

⁶We note that federal courts have repeatedly found that a prisoner of a state or political subdivision thereof has no constitutional property rights to interest accrued on funds deposited in the inmate’s trust account unless the state has created such an interest. *See Abdul-Wadood v. Bayh*, 85 F.3d 631 (7th Cir. 1996) (and cases cited therein) (holding that Indiana inmate has no constitutionally protected property interest in income earned on trust fund where Indiana statute provides for income to be deposited into inmates’ recreation fund).

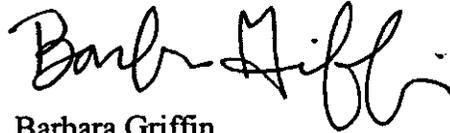
⁷Again, we assume this provision is consistent with federal law. *See supra* note 3.

⁸This office has approved a plan for using prison commissary profits similar to the plan for using interest on inmate trust funds required by the federal government in its contract with Reeves County. In Attorney General Opinion MW-143, we held that a county jail commissary may be operated at a profit, provided the profits are used for the benefit, education, and welfare of jail inmates. Attorney General Opinion MW-143 (1980) at 2. This result was subsequently codified in section 351.0415 of the Local Government Code.

S U M M A R Y

A county jail housing federal prisoners under contract with the United States Bureau of Prisons may place interest from federal inmate trust accounts in a "Special Projects Account" used to fund programs for the benefit of the inmate population as a whole.

Yours very truly,

A handwritten signature in black ink, appearing to read "Barbara Griffin". The signature is written in a cursive, flowing style.

Barbara Griffin
Assistant Attorney General
Opinion Committee