



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 25, 1998

The Honorable Ms. Kathleen M. Moss
Fannin County Auditor
Fannin County Courthouse
Bonham, Texas 75418

Letter Opinion No. 98-072

Re: Authority of a commissioners court to impose a limit on the farming out of county prisoners, and related questions (RQ-1041)

Dear Ms. Moss:

You have asked this office a series of questions concerning the operation of the county jail. As we understand it, the sheriff, in order to avoid jail overcrowding, is "farming out" inmates to other county jails. The commissioners court, concerned at the expense involved, wishes to know whether it can impose a limit on such "farming out," or whether it can take certain other acts which might lower the cost of keeping the jail. We are asked, therefore, to consider whether the commissioners court may limit the number of prisoners the sheriff may farm out; whether the sheriff may obligate funds for such farming out; whether the commissioners court may direct that the sheriff not farm out inmates if keeping such inmates in the county jail will violate the standards promulgated by the Texas Commission on Jail Standards (the "commission"); whether the sheriff, the county, or the commissioners court is liable for the sheriff's failure to execute civil or criminal warrants; whether the commissioners court may direct the sheriff not to execute arrest warrants, so as to prevent overcrowding; and whether the commissioners court may be civilly liable if it fails to budget adequate funds for the staffing or operation of the jail.

With one partial exception with respect to the sheriff's ability to obligate the county, we agree with the conclusions already reached by your county attorney in this regard. In our view, the commissioners court has no authority to limit the number of prisoners farmed out. Any general authority to contract that is necessary does, however, belong to the court rather than the sheriff; but the court has no discretion to refuse to enter into any necessary contracts if failure to do so will violate its responsibility to provide safe and suitable jails, or will violate the Eighth or Fourteenth Amendment rights of those incarcerated in the jail.¹ The commissioners court may not direct the sheriff to violate the rules of the commission, nor may it direct him not to fulfill his duty to serve warrants, failure to execute which might subject the sheriff to criminal liability. Finally, the county is bound by statute and by the Texas Constitution to provide adequate jails, may violate the Eighth

¹*Cf. Commissioners Court v. District Judge, 22nd Judicial Dist.*, 506 S.W.2d 630 (Tex. Civ. App.--Austin 1974, writ ref'd n.r.e.) (affirming writ of mandamus to compel commissioners to appropriate specified sum as county's proportional share of adult probation budget).

and Fourteenth Amendments if it fails to do so, and cannot be heard to say that budgetary constraints excuse any such constitutional or statutory violation.

We begin with general principles. The business of the county is generally conducted by and through the commissioners court, which can “exercise such powers and jurisdiction over all county business” as prescribed by the Texas Constitution and by statute. Tex. Const. art. V, § 18. The authority of the county and of the court is limited to that explicitly granted by Constitution or statute, or reasonably inferred from such specific powers. *Canales v. Laughlin*, 214 S.W.2d 451, 453 (Tex. 1948). The sheriff is an independent constitutional officer, with independent rights and duties. Tex. Const. art. V, § 23. The commissioners court is charged by Local Government Code section 351.001(a) with the obligation to provide “safe and suitable” county jails. The sheriff, pursuant to section 351.041 of the Local Government Code, is “the keeper of the county jail,” and is obliged “to exercise supervision and control over the jail.” This duty “cannot be avoided by delegating authority over the jail to deputies or other subordinates.” *Whirl v. Kern*, 407 F.2d 781, 795 (5th Cir. 1969). This office has previously opined that, “The authority of the commissioners court over the jail is limited to providing the jail, adequate funding, and broad operational guidelines which leave the actual operation of the jail with the sheriff.” Attorney General Opinion H-1190 (1978) at 3; *see also* Attorney General Opinion JM-1098 (1989) at 3. Contracts binding on the county, including contracts for services for the jail, must in general be made by the commissioners court unless a sheriff or other county official has specific authority to make them. Attorney General Opinion DM-111 (1992) at 2. The commissioners do not, however, have the discretion to refuse to enter into such contracts as are necessary to avoid violations of the Eighth or Fourteenth Amendment rights of prisoners. “Lack of adequate economic resources does not excuse, nor does it lessen, the obligation of states and local governments to provide jail facilities which are constitutionally adequate.” *Alberti v. Sheriff of Harris County, Texas*, 406 F. Supp. 649, 669 (S.D. Tex. 1975). Finally, no commissioners court, or other public entity, may require or demand that another public officer fail to carry out the duties imposed upon him by law. With these principles in mind, we turn to your questions.

As to your first question, in our view the commissioners court cannot impose a cap on the number of prisoners the sheriff farms out. Such a cap would not be a “broad operational guideline,” in Attorney General Opinion H-1190’s phrase, but would interfere directly with the sheriff’s authority over “the actual operation of the jail.” Moreover, such a cap is neither authorized by constitution or statute, or necessarily implicit in the court’s obligation to provide safe and suitable jails.

Given that the commissioners court, rather than the sheriff, has general contracting authority, the sheriff may not unilaterally enter into any necessary contracts for the farming out of prisoners. However, as the county attorney’s brief correctly notes, this fact does not give the court authority to refuse to take such measures as are necessary to carry out its constitutional and statutory obligations.

Nor may the commissioners court direct the sheriff to take actions which would violate the rules of the commission. Both the sheriff in his capacity as keeper of the jail and the commissioners court, given its responsibility under section 351.001 of the Local Government Code to provide safe and suitable jails, are bound by the operating rules established by the commission pursuant to the authority granted it by chapter 511 of the Government Code.

The commissioners court also may not instruct the sheriff not to execute warrants. Article 2.13 of the Code of Criminal Procedure requires of “[e]very peace officer” that “[h]e shall execute all lawful process issued to him by any magistrate or court.” Article 2.18 requires that “When a prisoner is committed to jail by warrant from a magistrate or court, *he shall be placed in jail by the sheriff. It is a violation of duty* on the part of any sheriff to permit a defendant so committed to remain out of jail” (Emphasis added.) Moreover, while the sheriff is not civilly liable to particular persons for failure to execute a criminal warrant in a timely fashion, *Munoz v. Cameron County*, 725 S.W.2d 319, 323 (Tex. App.--Corpus Christi 1986, no writ), Local Government Code section 85.021 provides that the sheriff commits an offense punishable by a fine of no more than \$100 if he fails to execute all process and precepts directed to him by legal authority, and article 2.16 of the Code of Criminal Procedure makes it an offense for the sheriff “wilfully [to] refuse or fail from neglect to execute” summonses, subpoenas, attachments for witnesses, “or any other legal process which it is made his duty by law to execute”

Additionally, though the commissioners court is not civilly liable for the sheriff’s failure to execute process, *see* Attorney General Opinion H-595 (1975), that fact will not insulate the county from its duty to provide safe and suitable jails under Local Government Code section 351.001, nor from its liability under article 104.002(a) of the Code of Criminal Procedure for “all expenses incurred in the safekeeping of prisoners confined in the county jail or kept under guard by the county.” A somewhat analogous situation was addressed by this office in Attorney General Opinion DM-313. In that case, the question presented was whether a county bore the cost of incarceration if a municipal court issued a commitment order on a state law violation and the sheriff refused to take custody of the prisoner. Noting that once the order was issued, the duty to incarcerate and the costs of incarceration were the sheriff’s, the opinion concluded:

In your hypothetical, the sheriff has not accepted the prisoners. However, the refusal to do so is not an exercise of discretion, but is rather, according to the plain language of article 2.18, a violation of duty. *The sheriff cannot avoid the cost of his duty by refusal to undertake it.*

Attorney General Opinion DM-313 (1995) at 2. (Emphasis added.)

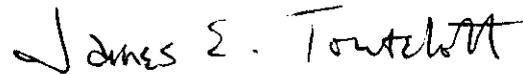
The cost of maintaining the jail in a manner that comports with the rules of the Commission on Jail Standards, the statutory requirements of Local Government Code section 351.001, and the Eighth and Fourteenth Amendments to the United States Constitution falls upon the county, and may not be avoided. *See Alberti*, 406 F. Supp. at 669. Accordingly, if it is necessary to farm out prisoners from the county jail in order to meet these obligations, the county may not limit the

authority of the sheriff to do so, refuse to pay the sums necessary to meet its obligations, or interfere with the sheriff's legal duty to execute criminal warrants.

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Yours very truly,

A handwritten signature in black ink that reads "James E. Tourtelott". The signature is written in a cursive style with a large initial "J".

James E. Tourtelott
Assistant Attorney General
Opinion Committee