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April 8, 1991

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Opinion Committee

The Honorable Dan Morales
Attorney General, State of Texas
Supreme Court Building
P.O. Box 12548
Austin, TX 78711-2548

RE: Request for opinion re
oversight responsibilities
of County Sheriff over
private prison facility in
his county

Dear General Morales:

This letter is written pursuant to my authority as the 83rd Judicial District Attorney on behalf of Bruce Wilson, Sheriff of Pecos County, Texas, requesting an opinion of the Attorney General of Texas as to the duties and responsibilities of the Sheriff of Pecos County over a private detention facility, to be operated under contract by a private vendor, but constructed and owned by an instrumentality of Pecos County, Texas and leased to Pecos County, Texas for the placement of Pecos County prisoners as well as other prisoners as permitted by law.

The questions presented for your review are as follows:

- (1) Whether the Commissioner's Court of Pecos County, Texas, by contract with a private vendor, can shift the sole right to supervise, manage, operate, control, and direct the performance of a private prison facility, owned by an instrumentality of Pecos County, Texas and leased to Pecos County, Texas for the placement of Pecos County prisoners as well as other prisoners as permitted by law, from the Sheriff of Pecos County, Texas to the private vendor?

ACCOMPANIED BY ENCLOSURES -
FILED SEPARATELY

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(2) Consistent with Constitutional and statutory authorities, as well as interpretations of same, what duties and responsibilities does the Pecos County Sheriff have to oversee the supervision, management, operation, control and direction of the performance of the Pecos County Detention Facility, as described above?

(3) Consistent with Constitutional and statutory authorities, as well as interpretations of same, what authority can the Sheriff of Pecos County, Texas exercise over a private prison facility which is owned by an instrumentality of Pecos County, Texas and leased to Pecos County, Texas for the placement of Pecos County prisoners as well as other prisoners as permitted by law, if in the discretion of the Sheriff of Pecos County, Texas, violations of laws or administrative regulations are alleged to have taken place in the management or operation of the private prison facility, including, but not limited to violations of the regulations promulgated by the Texas Commission on Jail Standards?

(4) Consistent with Constitutional and statutory authorities, as well as interpretations of same, can the Sheriff of Pecos County, Texas or the Texas Commission on Jail Standards withhold certification of a private prison facility, as described above, or the Texas Commission on Jail Standards decertify same, on the basis of the facility failing to meet the operational standards of the Texas Commission on Jail Standards, if jailers employed in a jail operated by a private vendor are not certified pursuant to V.T.C.A., Government Code, Section 415.0541 and/or the Texas Commission on Law Enforcement Officer Standards and Education?

The Commissioner's Court of Pecos County, Texas, with the concurrence of the Pecos County Sheriff, have recently contracted with a private vendor for the operation, management and maintenance of the Pecos County Detention Facility. Funding for the construction of the facility was made possible through the creation of an instrumentality of Pecos County, Texas in the form of a non-profit corporation, established pursuant to V.T.C.A.,

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Article 58291-4(a). The instrumentality issued bonds pursuant to the Texas Non-Profit Corporation Act, Article 1396-1.01, et seq., Vernon's Annotated Texas Civil Statutes.

The Pecos County Detention Facility was constructed to house minimum and medium security inmates of Pecos County, Texas as well as other inmates which by law are authorized to be placed in private detention facilities. As of this writing, the private facility is not operational, but it is anticipated that it will begin taking prisoners within 90 days.

The duties and responsibilities of the county sheriff with respect to county jails are rooted both in the Constitution of the State of Texas as well as statutory authorities, most notably, V.T.C.A., Local Government Code, Section 351.041, which provides as follows:

Section 351.041. Sheriff

(a) The Sheriff of each county is the keeper of the county jail. The sheriff shall safely keep all prisoners committed to the jail by a lawful authority, subject to an order of the proper court.

(b) The sheriff may appoint a jailer to operate the jail and meet the needs of the prisoners, but the sheriff shall continue to exercise supervision and control over the jail. (emphasis supplied)

Consistent with Op. Atty. Gen. 1978, No. H-1190, the Sheriff of Pecos County, as well as the Pecos County Commissioner's Court acknowledge that the authority to supervise, direct, or control actual daily operation of the county jail is vested in the office of the Sheriff of Pecos County, although the Pecos County Commissioner's Court does have general responsibilities in connection with the operation of the Pecos County Jail. Likewise, no dispute has arisen over Op. Atty. Gen. 1940, No. 0-2444 which states that the County Sheriff has the authority to employ, supervise and discharge all employees, including jail guards, pertaining to the safekeeping and security of prisoners as well as the overall operation of the County Jail. See Wichita County v. Vance, 217 S.W.2d 702, (Tex. Civ. App. 1949), ref. n.r.e. At least one case has determined that the statutory responsibility of the county sheriff for the county jail, and by implication all of the county's prisoners, cannot be avoided by delegating

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authority over the county jail to sheriff's deputies or other subordinates. Whirl v. Kern, 407 F.2d 781 (1969), certiorari denied 90 S.Ct. 210, 396 U.S. 901, 24 L.Ed. 177.

Please be advised that the Pecos County Sheriff does not seek to delegate his duties and responsibilities, but rather, seeks to insure that all duties and responsibilities are fully and completely complied with, consistent with any contractual obligations of Pecos County.

At issue is an operation agreement entered into between Pecos County, Texas and PRICOR Incorporated, wherein at Section 6.1, PRICOR Incorporated is and shall be an independent contractor, and, subject to the terms of the operation agreement, shall have the sole right to supervise, manage, operate, control, and direct the performance of the details incident to the duties under [the] agreement. (emphasis supplied). A copy of the operating agreement is enclosed for your convenience.

The above contract is silent as to the specific duties and responsibilities of the Pecos County Sheriff as to the oversight of the supervision, management, operation, control and direction of the facility.

This office does not request, nor does it desire a contractual interpretation of the operating agreement, but rather, seeks your opinion as to the exercise of and limitations to the duties and responsibilities of the Pecos County Sheriff, as a matter of law, when a contractual agreement is silent or contrary to the Sheriff's Constitutional and/or statutory duties.

Insofar as time is of the essence, I thank you for your kind attention.

Sincerely,



Richard Barajas

RB/jm

cc: Sheriff Bruce Wilson
Pecos County Commissioner's Court
Sheriff's Association of Texas
Texas Commission on Jail Standards
Texas Association of Counties