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Opinion Committee

Opinions Committee
Office of the Attorney General
of Texas
Supreme Court Building
Austin, Texas 78711-2548

Dear Sirs:

We would like to request a more detailed opinion from your office regarding Local Government Code, Section 351.0415. We requested an opinion in April of 1990 and are enclosing that earlier information for your review. The Legislature answered our primary question by amending the above referenced statute to apply to counties of less than 1,000,000. We understand that after September 1, 1991 the Sheriff of Lubbock County has the authority to contract with another person for the operation of a jail commissary. The questions which have arisen in our county and which are closely related to that issue are:

1. Does the authority to contract with another person include the authority to set the terms and conditions of the lease of jail space to the commissary operator?
2. Can a distinction be drawn between rental income and profits from commissary sales to inmates? Specifically, are the rental payments "commissary proceeds" that must be deposited in an account which is used to benefit inmates?

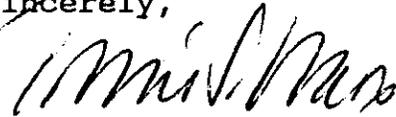
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Opinions Committee (2)

3. Under Section 351.0415 of the Local Government Code, what is the extent of the County Auditor's authority to review the accounts maintained by the commissary operator with whom the Sheriff has contracted?

Any assistance you can provide in this matter would be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Travis S. Ware". The signature is written in a cursive style with a large initial "T".

TRAVIS S. WARE
Criminal District Attorney

MEMORANDUM

FACTS

Lubbock County has a population of under 1,000,000 according to the last federal census. Our County Sheriff entered into a contract with a non-employee, outside service provider concerning the operation of the commissary in the Lubbock County Jail on August 20, 1989. The complete agreement is as follows:

It is agreed that D. L. Young will stock and operate the commissary in the Lubbock County Jail. In return he will buy the initial televisions needed for the operation on the second floor of the Jail by the time that it is completed and put into operation. Also beginning September 1, 1989 D. L. Young will pay fifty cents per square foot of space used to house the commissary. This contract is to continue in effect for a period of five years ending on August 19, 1994.

All terms and conditions cited above were determined without authorization from or input by the Commissioners' Court. The rental income is currently being deposited in the Lubbock County General Fund.

Employees of the Lubbock County Sheriff's Office actually take orders from the inmates and verify that those orders are correctly filled. They also maintain all inmates' money accounts. Those accounts have always been available for examination by the County Auditor. The County Auditor has never attempted to examine the accounts maintained by the commissary operator.

QUESTIONS PRESENTED

1. Does the authority to contract with another person include the authority to set the terms and conditions of the lease of jail space to the commissary operator?

Local Government Code, Section 351.001 requires the Commissioners' Court to provide a jail for county inmates. Generally, it is the Commissioners' Court who has the responsibility for contracting on behalf of the county. Anderson v. Wood, 152 S.W.2d 1084 (1941).

The amendment to Local Government Code, Section 351.0415 will grant to our sheriff the authority to contract with another person for the operation of a jail commissary on or after September 1, 1991 (emphasis added). Op.Atty.Gen. 1989, No. JM-1121 interprets the above referenced section to grant to the sheriff the authority to contract regarding the jail commissary without consulting the county purchasing agent. This certainly raises the possibility that, while generally the Commissioners' Court has contracting authority, Section 351.0415 gives the sheriff full contracting authority over all issues involved in providing a jail commissary for inmates.

2. Can a distinction be drawn between rental income and profits from commissary sales to inmates? Specifically, are the rental payments "commissary proceeds" that must be deposited in an account which is used to benefit inmates?

Rental income has little to do with profits made through commissary sales. The entire jail, including that portion used for the operation of a commissary, has been built by and maintained through Lubbock County General Fund monies. The rental income could easily be classified as funds used to establish and maintain the physical plant. Those funds would be used towards utility fees, janitorial costs, etc. As noted in the FACTS portion of this memorandum, employees are utilized to take and check orders. It seems unreasonable to expect the general county population to fund some of the operation of the commissary and then to use the lease payments for the benefit of inmates rather than to offset the cost of employee time and plant maintenance. This is particularly true in light of the fact that most of the profits from the actual sales to inmates are apparently being retained by the commissary operator.

The profits that are actually received from the sale of items to inmates certainly seem to be "commissary proceeds". The inmate population is a "captive audience" and the statute would seem to be addressing the excess of funds that inmates pay. In this way, the inmates' money would actually be used to benefit themselves.

3. Under Section 351.0415 of the Local Government Code, what is the extent of the County Auditor's authority to review the accounts maintained by the commissary operator with whom the sheriff has contracted?

Section 351.0415(d) requires the County Auditor to fully examine the jail commissary accounts. There is no limiting language in the statute and no case law has been found on this particular issue. In order for the auditor to be able to verify the correctness of the accounts, he would have to review all commissary accounts. There are accounts maintained by the Sheriff's office as well as those maintained by the commissary operator. This provision would seem to indicate that the auditor has the authority and the duty to review the commissary accounts maintained by the commissary operator.