

COMMISSION ON JAIL STANDARDS

RQ-351



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April 3, 1992

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APR 08 92

Opinion Committee

Ms. Madeleine B. Johnson
Chair, Opinions Committee
Office of the Attorney General
Price Daniel Sr. Building
Austin, Texas 78701

Dear Ms. Johnson:

The Commission on Jail Standards initiated minimum jail standards authorizing temporary emergency housing when a need is identified and permanent resolution to the emergency conditions has begun. Proposed standards require that temporary emergency housing comply with all requirements that effect a safe, suitable and sanitary facility.

During our review process, it has been stated that the Commission on Jail Standards does not have the authority to propose or adopt such standards because (1) the statute only allows the commission to grant up to one year for a county to comply with deficiencies, (2) the commission may only prohibit the confinement of prisoners in a facility, (3) the statute does not provide for the development of temporary facilities, and (4) cells must be constructed of masonry or metal or comparable material to provide segregation. The reviewer also opined that proposed rules which are deviant from established minimum standards are impermissible.

The Commission on Jail Standards concludes that the proposed standards for temporary emergency housing are not intended as a remedy for a non-compliant jail but, are proposed as a method for counties to provide safe and suitable housing of inmates while permanent incarceration solutions are being planned or constructed.

An attorney general's opinion issued May 17, 1991 (DM-24) appears to address legislative intent which broadens the commission's authority in adopting standards. The commission is desirous of creating standards for temporary emergency housing. However, failure to receive concurrence by legal authority, we are unable to publish in the Texas Register for comment and adoption.

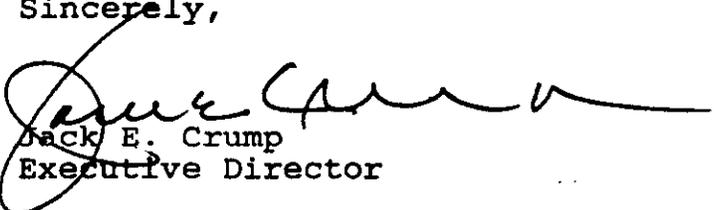
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Specific questions affecting this issue are:

- (1) May the commission create standards authorizing facilities for temporary purposes?
- (2) Does the commission have other alternatives to resolve non-compliant conditions (i.e., crowded) except closure?
- (3) May the commission authorize the creation of facilities and usage for longer than one year?
- (4) It is envisioned that temporary facilities would have only one classification of inmate. Does the requirement of Section 351.005 Local Government Code, which deals with separation of inmates, limit construction to masonry, metal or comparable material, provided the facility is structurally sound?

I have attached copies of our proposed standards along with comments of our legal advisor. Your early review and response is encouraged since counties have a burgeoning population and permanent, long term solutions require time to plan, design and construct.

Sincerely,



Jack E. Crump
Executive Director

JEC/lvl

cc: J. David Nelson, Chairman, TCJS
Ken W. Anderson, Jr., Vice-Chairman, TCJS
Carl Griffith, Sheriff, Jefferson County
Drew Durham, Attorney General's Office
Susan Werner, Attorney General's Office