



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 24, 1998

The Honorable Tim Curry
Criminal District Attorney
401 West Belknap Street
Fort Worth, Texas 76196-0201

Letter Opinion No. 98-071

Re: Whether, under Local Government Code section 351.0415(b)(3), a sheriff must rebid a contract with a third party to operate the jail commissary every five years (RQ-1093)

Dear Mr. Curry:

Local Government Code section 351.0415(a) permits a county sheriff to contract with another person to operate the county jail commissary. Subsection 351.0415(b)(3) requires the sheriff to "accept new bids to renew contracts of commissary suppliers every five years." You ask whether subsection (b)(3) applies to a contract to operate the commissary. We conclude that it does. Given the answer to your first question, we do not answer your second question, which is contingent upon a negative answer to the first question.

While a sheriff may choose to operate jail commissaries in sheriff's department facilities him- or herself, you explain that the Tarrant County Sheriff has opted to contract with a private vendor to operate commissaries in all facilities of the sheriff's department. The private vendor buys all the commissary's inventory and provides trained personnel to "service the commissary cart equipment."¹ From the documents you submitted with your request, it appears that the arrangement between the sheriff and the private vendor currently operating the commissaries began in July 1994 and extends into February 2001. If Local Government Code section 351.0415(b)(3) applies to this arrangement, however, the sheriff must accept new bids for the contract by 1999.

We turn now to the statute about which you ask, Local Government Code section 351.0415. Subsection (a) permits a county sheriff to operate or to contract with another person to operate a commissary for the use of county jail prisoners. The sheriff must, under subsection (b)(3), "accept new bids to renew contracts of commissary suppliers every five years."

In essence, you ask whether a *commissary supplier* for purposes of subsection (b)(3) includes a commissary operator, when the operator is not the sheriff. Conversely, your question suggests that subsection (b)(3) applies only when a sheriff who operates the commissary him- or herself must contract with individual suppliers of inventory.

¹Commissary Service Agreement between Tarrant County Sheriff's Dep't and Mid-States Servs., Inc. ¶ 9 (Jan. 12, 1997).

We believe subsection (b)(3) requires a sheriff to accept new bids on a contract to operate the commissary every five years. As you suggest, a vendor who operates a commissary under section 351.0415(a) *supplies* all of the commissary inventory. Additionally, a contrary interpretation of subsection (b)(3) would, we think, contravene the legislature's intent. In our view, the legislature intended subsection (b)(3) to require the sheriff to pursue the most cost-effective arrangement every five years, ultimately benefitting county purposes.² This intent must encompass a contract between a sheriff and a vendor who supplies only certain items for sale in the commissary as well as a contract between a sheriff and a vendor who, as operator of the commissary, supplies all of the items for sale in the commissary.

Given our conclusion that Local Government Code section 351.0415(b)(3) applies to a contract to operate the sheriff's department's commissaries, we need not respond to your second question. As you phrase the question, it requires an answer only if we conclude that subsection (b)(3) does not apply to a contract between a sheriff and the commissary operator.³

S U M M A R Y

Local Government Code section 351.0415(b)(3) requires a county sheriff to accept new bids on a contract to operate a commissary for the use of county jail prisoners every five years.

Yours very truly,



Kymberly K. Oltrogge
Assistant Attorney General
Opinion Committee

²See Local Gov't Code § 351.0415(c) (restricting sheriff's use of commissary proceeds). Unfortunately, we found no helpful legislative history clarifying Local Government Code section 351.0415(b)(3).

³You ask, "If the answer to 1. is no, then the second question is: Does the bidding requirement of § 351.0415(b)(3) of the Code require the outside supplier who is operating the commissary to accept bids from his supplier to purchase goods sold in the jail commissary?"