

RQ-678



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SJS

Texas Attorney General
Opinion Committee
P.O. Box 12548
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Via U.S. Express Mail / RRR # TB 462 268 708

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Dear Assistant Attorney General:

The elected Criminal District Attorney of Denton County requests an opinion under Government Code, § 402.043 on a matter not currently in litigation, but ripe for such action by elected officials and county employees.

ISSUE

Is the Sheriff of Denton County reasonable in refusing privatizing all of Denton County's present jail facilities which house high, medium and low risk inmates, because the contract for privatization would be void?

ANALYSIS

The Denton County Commissioners Court is considering privatization of the Denton County Jail. The Sheriff of Denton County believes he should reasonably refuse such privatization based on Local Government Code, § 351.101, because Denton County's jail houses medium and high risk inmates, not just low risk inmates. Contracting for medium and high risk inmates would be in violation of this section.

The Denton County Commissioners Court believes Local Government Code, §§ 351.102 and 351.103 would allow for privatization of a high risk jail if Local Government Code, § 351.102 can be read independent of Local Government Code, § 351.101.

Local Government Code, § 351.102 apparently would allow all significant activities of a jail to be privatized, but it is titled as "Additional Authority to Contract". Local Government Code, § 351.101 only allows contracting for low-risk county inmates and further states "a contract made in violation of this section is void."

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Local Government Code, § 351.102's title includes the word "Additional". The word "additional" would cause it to be read in conjunction with Local Government Code, § 351.101. There is potentially a void contract if all parameters within § 351.101 not modified by § 351.102 are not met. The question of low, medium or high risk are not addressed in Local Government Code, § 351.102, therefore, the low-risk requirement of Local Government Code, § 351.101 would apply. If this view is correct, a contract for high or medium risk inmates housed by private jail management would be void.

I appreciate your attention to this matter. Please do not hesitate to contact me if you should have any further questions or concerns.

Respectfully submitted,

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Criminal District Attorney

by: 
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Assistant District Attorney