

Kathleen Moss

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County Auditor • Fannin County Courthouse • Bonham, Texas 75418

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Sarah Shirley
Chair Opinion Committee
Office of the Attorney General
P. O. Box 12548
Austin, Tx 78711-2548

Opinion Committee

KQ-1041

Dear Ms. Shirley,

On behalf of Fannin County Judge Derrell Hall, I would like to require an Attorney General Opinion on the enclosed questions regarding the operation of the County Jail.

Due to the large cash outlay to house prisoners outside the county, it would be greatly appreciated if this request could be expedite.

If any additional information is needed please feel free to call or fax. (903)-583-7451 (Auditor's) or (903)-583-7455 (County Judge). Fax (903)-583-7811.

Sincerely,

Kathleen M. Moss

Kathleen M. Moss
Fannin County Auditor

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DISTRICT & COUNTY ATTORNEY
 FANNIN COUNTY COURTHOUSE
 BONHAM, TEXAS 75418

2 September 1997

Judge Derrell Hall
 Fannin County Courthouse
 101 E. Sam Rayburn, #101
 Bonham, Texas 75418-4346

re: Opinion

Dear Judge Hall:

This is in response to your request for opinion on the six questions noted below:

Questions & Responses

Question 1-

Can a County Commissioners Court order a cap or limit to the number of prisoners that the Sheriff "farms out" to other jails? NO.

The County, through its Commissioners Court, can "exercise such powers and jurisdiction over all county business" as may be prescribed and set forth in the Constitution or by legislation. **Texas Constitution Art. V, section 18** That provision has been interpreted to mean that unless an act is specifically set out in the Constitution or legislation, then the County cannot do the act.

There is no provision in the Constitution authorizing the commissioners court to order or cap the number of prisoners that the Sheriff can farm out.

There is legislation related to the commissioners court and the county jail. In Texas Local Government Code §351.001 (formerly Article 5116, V.T.C.S.), the commissioners court must provide "safe and suitable jails for the county." As interpreted by Attorney General Opinion H-1190 (1978), and cited in Attorney General Opinion JM-1098 (1989)

"the authority of the commissioners court over the jail is limited to providing the jail, adequate funding, and broad operational guidelines which leave the actual operation of the jail with the sheriff."

The Sheriff is specifically charged with the responsibility for the jail. ***Whirl v. Kern*, 407 F. 2d 781, 795 (5th Cir. 1968)** The Sheriff is the "keeper" of the jail for all purposes and shall

"exercise supervision and control over the jail." Texas Local Government Code §351.041 (formerly Article 5116, V.T.C.S.) In further support of that, Attorney General Opinion H-1190 (1978), was summarized by stating,

"Authority to supervise, direct or control the actual daily operation of a county jail is vested in the office of the sheriff, . . ."

There is no other authority allowing the Commissioners court to legally cap or limit the number of prisoners that the Sheriff "farms out" or sends to other jails.

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THEREFORE, THE COUNTY COMMISSIONERS COURT CANNOT LEGALLY ORDER A CAP OR LIMIT TO THE NUMBER OF PRISONERS THAT THE SHERIFF "FARMS OUT" TO OTHER JAILS.

Question 2-

Can a Sheriff obligate county monies for housing inmates out of county if such expenditures are not budgeted? YES.

Neither the Sheriff, nor any other county official generally can obligate the county to pay money that is not properly budgeted.

However, the Commissioners Court has an obligation to operate safe and suitable jails for the county. Texas Local Government Code §351.001 The Commissioners Court is responsible for funding the agencies which comprise the criminal justice system. *Alberti v. Sheriff of Harris County*, 406 F. Supp. 649, 659 (S.D. Tex. 1975) That obligation has been interpreted to mean that those charged with responsibility for the county jail should provide sufficient amounts in the sheriff's budget to avoid unsafe and overcrowded jails. In fact, lack of funds would not justify failure to correct violations of the Constitution or other law at a county jail. *Smith v. Sullivan*, 553 F. 2d 373

The county is liable for all expenses incurred in the safekeeping of prisoners confined in the county jail or kept under guard by the county. Art. 104.002(a) Texas Code of Criminal Procedure.

To pay for such expenses, the Commissioners Court could authorize an emergency expenditure as an amendment to the original budget, if the expenditure was "to meet an unusual and unforeseen condition that could not have been included in the original budget through the use of reasonably diligent thought and attention." Texas Local Government Code § 111.010(c)

THE SHERIFF IN PERFORMANCE OF HIS LAWFUL DUTY HAS A DUTY TO INCARCERATE CERTAIN PEOPLE AND THE INCARCERATION OF THOSE PEOPLE COULD OBLIGATE THE COUNTY TO SPEND SUFFICIENT AMOUNTS TO PROVIDE SAFE AND SUITABLE JAILS.

Question 3

Can Commissioners Court direct Sheriff not to place prisoners in out of county jails if housing prisoners in the home county jail will violate TCJS rules? NO.

The Commissioners Court cannot legally order the Sheriff to violate TCJS rules, because it is not authorized to do so by either the Texas Constitution or the legislature. For further support, see the response to Question 1 and the noted Attorney General Opinions.

Texas Local Government Code § 351.001 in subsection (a) states:

THE COMMISSIONERS COURT OF A COUNTY SHALL PROVIDE SAFE AND SUITABLE JAILS FOR THE COUNTY. {emphasis added}

That law requires the County to not only operate the "safe and suitable" jails, but to operate in accordance with certain standards. Specifically, the *Texas Government Code §511*, covers the operations of jails and necessarily requires the County to operate in compliance with TCJS rules.

37 TAC §251.1, part of the rules of the Texas Commission on Jail Standards gives that Commission authority to make rules for operation of jails.

THE COMMISSIONERS COURT IS NOT AUTHORIZED TO INSTRUCT THE SHERIFF TO VIOLATE TCJS RULES.

Question 4

Is the Sheriff, the county, or commissioners court liable for sheriff's failure to execute warrants, either criminal or civil? YES & NO

The Commissioners Court, and presumptively the County, are not liable for a sheriff's failure to execute process. Op. Tex. Atty. Gen. 1975, No. H-595

The Sheriff is not civilly liable for failure to timely execute a warrant. *Munoz v. Cameron County*, 725 S.W.2d 319, 323 (Civ. App. -Corpus Christi 1965, no history)

The Sheriff may be criminally liable and subject to contempt of court for failure to execute warrants and other process. Texas Local Government Code § 85.021

LIABILITY VARIES AS SET FORTH ABOVE.

Question 5

Does the Commissioners Court have authority to instruct sheriff not to serve warrants to prevent overcrowding or to avoid costs of out of county housing? NO.

The Commissioners Court cannot legally instruct the Sheriff not to serve warrants to prevent overcrowding to avoid costs of out of county housing because such is not authorized by the Texas Constitution or the legislature.

Please see the explanation set forth in Question 4 above, along with the noted Attorney General Opinions, and note that the *Texas Code of Criminal Procedure §2.13* requires the Sheriff to execute all lawful process issued to him by the magistrate of a court.

THE COMMISSIONERS COURT DOES NOT HAVE THE LAWFUL AUTHORITY TO INSTRUCT THE SHERIFF NOT TO SERVE WARRANTS FOR ANY REASON.

Question 6

Is the commissioners court and/or its individual members civilly liable for failure to budget adequate funds to staff and/or operate a county jail facility? YES.

The members of the Commissioners Court are generally not liable individually for failure to budget adequate funds to staff and/or operate a county jail facility or any other legitimate act. This remains true as long as the member acted in good faith. It is especially true if the member relied on legal advice and acted within his official duties. *Torres v. Owens*, 380 S.W. 2d 30, 34 (Tex. Civ. App.--Corpus Christi 1964, n.r.e.)

The Commissioners Court is responsible for funding the agencies which comprise the criminal justice system. *Alberti v. Sheriff of Harris County*, 406 F. Supp. 649, 659 (S.D. Tex. 1975) That obligation has been interpreted to mean that those charged with responsibility for the county jail should provide sufficient amounts in the sheriff's budget to avoid unsafe and overcrowded jails. In fact, lack of funds would not justify failure to correct violations of the Constitution or other law at a county jail. *Smith v. Sullivan*, 553 F. 2d 373

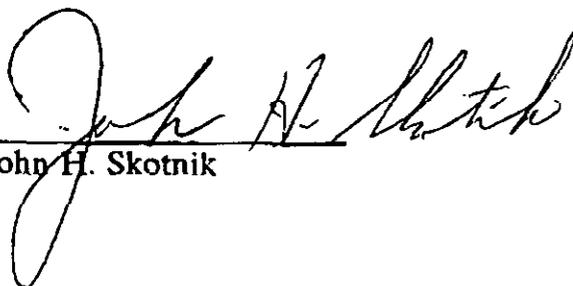
Failure to adequately fund the jail in the initial budget or failure to timely amend the budget for necessary funding for the jail could be seen as an abuse of discretion by the commissioners court in light of the courts responsibility to fund. An allegation of abuse of discretion is subject to review by the district court. *Ector County v. Stringer*, 843 S.W.2d 477, 479 (Tex. 1992)

THE COUNTY, THROUGH THE COMMISSIONERS COURT, IS LIABLE FOR FAILURE TO BUDGET ADEQUATE FUNDS TO STAFF AND/OR OPERATE THE COUNTY JAIL. INDIVIDUAL MEMBERS ARE NOT LIABLE.

Thank you for allowing this office to be of service to you in this matter.

Sincerely,

James S. Moss

by 
John H. Skotnik