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COMMITTEE ON  
**URBAN AFFAIRS**



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SEP 05 2008

**OPINION COMMITTEE**

September 4, 2008

The Honorable Greg Abbott, Attorney General  
Attorney General of Texas  
Post Office Box 12548  
Austin, Texas 78711-2548  
[Fax No. (512) 472-6538]

**RQ-0738-GA**

FILE # MI-45820-08

I.D. # 45820

Re: Request for Attorney General's Opinion

Dear General Abbott:

I am requesting an opinion as to whether it is a violation of law for a person holding the office of Sheriff to accept a fee from a third party who contracts with the Sheriff's county as a Lessee/Operator of a county jail. The fee, based upon inmate count, would ostensibly be for the Sheriff's administrative responsibilities. The Sheriff would be required to approve of the contract before the county could enter into such an agreement with a third party, and the fee received by the Sheriff could be as much as \$12,000 a year (or more), over and above the Sheriff's regular salary.

While there are several such contracts currently in effect within the State of Texas, I am not requesting an opinion for any certain county's contract, but am asking generally.

Section 351.041 of the Texas Local Government Code provides:

"(a) The sheriff of each county is the keeper of the county jail. The sheriff shall safely keep all prisoners committed to the jail by a lawful authority, subject to the order of a proper court.

(b) The sheriff may appoint a jailer to operate the jail and meet the needs of the prisoners, but the sheriff shall continue to exercise supervision and control over the jailer."

Section 351.101 of the Texas Local Government Code ("Authority to Contract") provides:

"The commissioners court of a county, with the approval of the sheriff of



the county, may contract with a private organization to place inmates in a detention facility operated by the organization. The commissioners court may not contract with a private organization in which a member of the court or an elected or appointed peace officer who serves in the county has a financial interest or in which an employee or commissioner of the Commission on Jail Standards has a financial interest. A contract made in violation of this section is void.”

Thus, the sheriff has a statutory duty to be the keeper of the county jail and county prisoners, but is authorized to appoint a jailer to operate the county jail. The county is authorized by statute to contract with a private organization to operate the county jail, provided that the sheriff approves of the contract.

The statutes in no way relieve a county sheriff from his or her responsibility to keep the jail and prisoners.

The fact that a county cannot enter into a contract for jail services from a private organization without the approval of the sheriff creates a situation which arguably brings into play the following questions under the scenario outlined:

1. Is there any constitutional or statutory authority which allows a sheriff to be offered or to accept an administrative fee paid by a private organization?
2. Does the acceptance of such an administrative fee by the sheriff constitute or is it tantamount to having a “financial interest” in the private organization which violates Section 351.101 of the Texas Local Government Code and causes the contract to be void?
3. Is the payment or acceptance of an administrative fee to the sheriff, who must first approve the contract between the county and a private organization wishing to operate a facility for county prisoners, a violation of any criminal laws?

I have been unable to find any constitutional or statutory authority which allows a sheriff to be offered or to accept an administrative fee paid by a private organization. To the contrary, the sheriff's duties regarding county prisoners is clear. A sheriff's salary/compensation includes being paid for the safe keeping of county prisoners. Why should a sheriff be paid an extra fee for performing his duties? Also clear is that the Texas Constitution states how the sheriff is to be compensated. The sheriff is to be paid by the state or county and by no other person or entity. See Texas Constitution, at Article V, Section 23 and Article XVI, Section 61. See Texas Constitution, Article 3, Section 53, which also addresses “extra compensation”.

Although the sheriff may not actually be a shareholder of the private organization and hold a shareholder's interest in the private organization, there can be no doubt that the sheriff would have a “financial interest” in the private organization's contract with the county if the sheriff receives a sizeable administrative fee after approving of the contract if the contract includes such an administrative fee to the sheriff. Thus, such an arrangement would violate the spirit and intent, if not the language, of Section 351.101 of the Texas Local Government Code.

Regarding issues of criminal responsibility, the payment of an administrative fee to the very person who has the sole authority to approve (or disapprove by withholding approval) of the county entering into a contract with a private organization for jail services, appears to call for an examination as to the applicability of Section 36.02 ("Bribery") of the Texas Penal Code, and Section 36.08("Gift to Public Servant by Person Subject to His Jurisdiction"). A sheriff is a "public servant" who, in the above-described scenario, is "interested in or likely to become interested in any contract....involving the exercise of his discretion".

To me, there appears no legitimate rationale to justify excepting a county sheriff or a third party from what is criminal conduct in all other applications of the criminal statutes, or to allow the civil statutes and Texas Constitution to be ignored.

Your addressing this request will be greatly appreciated.

Respectfully submitted,

A handwritten signature in black ink that reads "Kevin Bailey". The signature is written in a cursive style with a large, prominent "K" and "B".

Kevin Bailey  
Chair, Committee on Urban Affairs