



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 24, 2019

The Honorable Noble D. Walker, Jr.  
Hunt County District Attorney  
Post Office Box 441  
Greenville, Texas 75403-0441

Opinion No. KP-0271

Re: Whether a sheriff may expend commissary funds for a salary stipend for a deputy sheriff with duties related to operation of the commissary (RQ-0284-KP)

Dear Mr. Walker:

You ask about a county sheriff's use of county jail commissary funds to finance a salary stipend for a deputy sheriff.<sup>1</sup> Your questions stem from section 351.0415 of the Local Government Code, which authorizes a sheriff to operate a commissary within certain administrative and expenditure parameters for use by county jail inmates. *See generally* TEX. LOC. GOV'T CODE § 351.0415. You set forth a list of ten duties, as relayed to you by the sheriff, outlining the deputy's responsibilities with regard to the commissary fund. Request Letter at 2–3. On the basis of those duties, you ask whether a sheriff may expend county jail commissary funds on a salary stipend for the deputy and, if so, whether the amount of the stipend must bear some reasonable relationship to the time and effort spent performing those duties. *Id.* at 3.

A sheriff or his designee “may operate, or contract with another person to operate, a commissary for the use of inmates committed to the county jail.” TEX. LOC. GOV'T CODE § 351.0415(a). Subsection 351.0415(b) of the Local Government Code generally places the “exclusive control” of commissary funds in the hands of the sheriff.<sup>2</sup> *Id.* § 351.0415(b)(1). That said, a sheriff “may use commissary proceeds only” for the purposes set forth by statute, which are to:

- (1) fund, staff, and equip a program addressing the social needs of the inmates, including an educational or recreational program and religious or rehabilitative counseling;

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<sup>1</sup>See Letter from Honorable Noble D. Walker, Jr., Hunt Cty. Dist. Att’y, to Honorable Ken Paxton, Tex. Att’y Gen. at 3 (Apr. 17, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> (“Request Letter”).

<sup>2</sup>Not applicable here, a narrow exception to the sheriff's exclusive control over commissary funds exists for a county meeting particular population and geographic requirements. *See* TEX. LOC. GOV'T CODE § 351.04155(a).

- (2) supply inmates with clothing, writing materials, and hygiene supplies;
- (3) establish, staff, and equip the commissary operation and fund the salaries of staff responsible for managing the inmates' commissary accounts;
- (4) fund, staff, and equip both an educational and a law library for the educational use of inmates; or
- (5) fund physical plant improvements, technology, equipment, programs, services, and activities that provide for the well-being, health, safety, and security of the inmates and the facility.

*Id.* § 351.0415(c); *see also id.* § 351.0415(a) (providing that the operation of the commissary fund must also comply with rules adopted by the Commission on Jail Standards).<sup>3</sup> Subsection 351.0415(c)(3) expressly allows the sheriff to use commissary funds to “staff . . . the commissary operation and fund the salaries of staff responsible for managing the inmates’ commissary accounts.” *Id.* § 351.0415(c)(3). In addition, subsections 351.0415(c)(1) and (4) authorize the sheriff to use commissary funds to “staff” social needs programs, an educational library, and a law library, suggesting that expenditures associated with providing staff for those particular programs, such as salaries, could come within the parameters of the statute. *Id.* § 351.0415(c)(1), (4). You tell us that among his or her duties, the chief deputy “supervises . . . the commissary account” and “reviews [and] approves expenditures and purchases” from the account. Request Letter at 2. While these activities appear to fall within the scope of permissible expenditures for commissary proceeds under subsection 351.0415(c), this office cannot so conclude as a matter of law. *See* Tex. Att’y Gen. Op. No. KP-0159 (2017) at 1 (“The propriety of a particular expenditure from a commissary account is a question of fact that we cannot answer in an attorney general opinion.”). Instead, the sheriff’s authority to “use commissary proceeds only” for statutory purposes and his or her “exclusive control of the commissary funds” gives the sheriff the authority to initially determine whether the duties of the deputy fall within the scope of subsection 351.0415(c) so as to justify the expenditure, subject to administrative review by the Commission on Jail Standards as well as judicial review under an abuse of discretion standard. *See* TEX. LOC. GOV’T CODE § 351.0415(b)(1), (c); TEX. GOV’T CODE § 511.011; *see also Fort Bend Cty. Wrecker Ass’n v. Wright*, 39 S.W.3d 421, 425–26 (Tex. App.—Houston [1st Dist.] 2001, no pet.) (concluding that a sheriff “has the power to make and enforce rules, regulations, and policy”); Tex. Att’y Gen. Op. No. KP-0159 (2017) at 2 (recognizing the actions of a sheriff are subject to judicial review under an abuse of discretion standard and administrative review by the Commission on Jail Standards).

Regarding your second question, subsection 351.0415 does not directly address the relationship between the amount of commissary fund expenditures and the time and effort spent performing such authorized activities. However, judicial review under an abuse of discretion standard incorporates the principle that “a decision so arbitrary and unreasonable as to amount to

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<sup>3</sup>Commissary proceeds may not, however, “fund the budgetary operating expenses of a county jail.” *Id.* § 351.0415(g).

a clear and prejudicial error of law” can form the basis for a mandamus action. *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992); *see also Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991) (holding that “a writ of mandamus may issue in a proper case to correct a clear abuse of discretion by a public official”). Thus, a court would likely conclude that an expenditure of commissary funds under subsection 351.0415(c) is not arbitrary if the amount of the expenditure is reasonable in light of the performance of the authorized activities.

S U M M A R Y

The sheriff's "exclusive control" of commissary funds under subsection 351.0415(b)(1) of the Local Government Code and his or her authority under subsection 351.0415(c) to "use commissary proceeds only" for statutory purposes gives the Hunt County sheriff the authority to initially determine whether an expenditure is authorized, subject to administrative review by the Commission on Jail Standards and judicial review under an abuse of discretion standard.

A court would likely conclude that an expenditure of commissary funds under subsection 351.0415(c) is not arbitrary if the amount of the expenditure is reasonable in light of the performance of the authorized activities.

Very truly yours,



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