



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

March 16, 2020

The Honorable Renee Ann Mueller  
Washington County Attorney  
100 East Main Street, Suite 200  
Brenham, Texas 77833

Opinion No. KP-0295

Re: Whether revenue generated from inmates' use of a PIN debit system to pay for phone time must be credited to the county jail commissary account or to the county general fund (RQ-0309-KP)

Dear Ms. Mueller:

You ask whether revenue generated from inmates' use of a PIN debit system to pay for phone time must be credited to the county jail commissary account controlled by the sheriff or to the county general fund.<sup>1</sup> You inform us that, to comply with an administrative rule requiring phone service for inmates, the county contracts with a telephone service provider to provide inmates with prepaid and collect phone services. Request Letter at 1; *see also* 37 TEX. ADMIN. CODE § 291.1(2) (Tex. Comm'n on Jail Standards, Inmate Telephone Plan). Under the contract, the service provider pays the county a commission on calls of all types. Request Letter at 1. You state that previously the jail commissary sold prepaid telephone cards in set amounts to the inmates and retained proceeds from the sale of the cards as commissary funds. *Id.* at 2. Under the current plan, however, the service provider creates a PIN debit account for each inmate, and the inmate may allocate funds from the inmate's trust account to the PIN debit account in order to obtain phone services. *Id.*<sup>2</sup> You ask whether the proceeds the county receives from the telephone service provider under the PIN debit plan should be credited to the commissary account or to the general fund of the county. *Id.*

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<sup>1</sup>*See* Letter from Honorable Renee Ann Mueller, Washington Cty. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 2 (Aug. 26, 2019), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> ("Request Letter"). An executive summary from the telephone service provider attached to your request defines "PIN" as "Personal Identification Number or Inmate ID." Request Letter, Exhibit B at 7 (on file with the Op. Comm.).

<sup>2</sup>Section 501.014 of the Government Code provides for an inmate trust account to regulate an inmate's possession and use of money while in jail custody. *See* TEX. GOV'T CODE § 501.014. When an inmate arrives at a facility, the Department of Criminal Justice must take possession of all money on the inmate's person and credit it to an account created for the inmate. *See id.* § 501.014(a); *see also id.* § 491.001(a)(3) (definition of "Department"). Any other money the inmate receives during confinement must also be credited to the inmate trust account. *Id.* § 501.014(a). The Department may expend funds from the inmate trust account as required by law or policy, or otherwise as the inmate directs by written order. *Id.* When an inmate is discharged or released for various reasons, the Department must provide the inmate with the money held in the inmate's trust account. *Id.* § 501.015(a)(2).

Generally, county officers must deposit funds they receive from whatever source with the county treasurer for placement in the county depository. TEX. LOC. GOV'T CODE §§ 113.001, .003, .021(a), (b); *see generally* Tex. Att'y Gen. Op. No. GA-0814 (2010) at 1. As an exception to that general rule, section 351.0415 of the Local Government Code grants the county sheriff or designee exclusive control of “commissary funds.” TEX. LOC. GOV'T CODE § 351.0415(b)(1) (“Commissary Operation by Sheriff or Private Vendor”). That statute authorizes the sheriff to operate a jail commissary, maintaining “commissary accounts” and records of proceeds from the commissary operation and disbursements made from the proceeds. *Id.* § 351.0415(b)(1), (2). The sheriff may expend proceeds from the operation of the commissary only for statutorily designated purposes for the benefit of the inmates. *Id.* § 351.0415(c), (g). Thus, while the commissary statute does not define its terms, the funds and accounts needed to operate a commissary and the proceeds derived from commissary operations are “commissary funds” under the statute, subject to the sheriff’s exclusive control. *See id.* § 351.0415. As such, commissary funds are not funds “belonging to the county” that the sheriff must deposit with the county treasurer. *See* Tex. Att’y Gen. Op. No. GA-0791 (2010) at 3 (stating “the sheriff’s ‘exclusive control’ of the commissary fund also means that the sheriff retains custody of the fund instead of having to deposit it with the county treasurer pursuant to section 113.021(a)”).<sup>3</sup>

Section 351.0415 further requires the sheriff to operate a jail commissary according to rules adopted by the Commission on Jail Standards (“Commission”). TEX. LOC. GOV'T CODE § 351.0415(a). The Commission’s commissary rule requires a facility to implement a written plan “which allows for the purchase of hygiene items and sundries,” and requires commissary proceeds to be expended according to the commissary statute. 37 TEX. ADMIN. CODE § 291.3 (Tex. Comm’n on Jail Standards, Inmate Commissary Plan). A different Commission rule requires a facility to provide inmates with local and long-distance telephone access, which can be on a prepaid or collect basis. *Id.* § 291.1 (Inmate Telephone Plan). Because telephone privileges are separate from commissary privileges, several attorney general opinions conclude that generally the proceeds a county receives from a provider of inmate telephone services are not commissary funds subject to the sheriff’s control and therefore must be paid to the county treasurer. *See, e.g.,* Tex. Att’y Gen. Op. Nos. KP-0079 (2016) at 3 (stating that revenue from pay telephones and telephone services are not commissary proceeds and must be held in the county treasury), GA-1041 (2014) at 3 (concluding that any revenue from voice-over-internet services are “county funds”), GA-0059 (2003) at 3 (determining that revenues generated by a contract between an inmate telephone service provider and a county constituted county funds), DM-19 (1991) at 2–3 (concluding that proceeds

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<sup>3</sup>Some facilities may designate an inmate trust account as an “inmate commissary account,” that is, an account made up of inmate trust funds that may be expended for commissary purchases. *See Hatfield v. Scott*, 306 F.3d 223, 224–25 (5th Cir. 2002); *Reed v. State*, 269 S.W.3d 619, 621 & n.1 (Tex. App.—San Antonio 2008, no pet.). But an “inmate commissary account” governed by Government Code section 501.014 is not a sheriff’s “commissary account” governed by section 351.0415 of the Local Government Code. *Compare* TEX. GOV'T CODE § 501.014, *with* TEX. LOC. GOV'T CODE § 351.0415; *see also* Tex. Att’y Gen. Op. Nos. GA-0791 (2010) at 1 n.1 (distinguishing “commissary funds” from inmate’s personal funds); GA-0534 (2007) at 1 (clarifying that an account referred to by the requestor as an “inmate’s commissary account” was an account composed of funds taken from an inmate, earned by the inmate, or given by others for the inmate’s use). Only when an inmate uses trust funds to make a purchase from the commissary do the funds become commissary proceeds under section 351.0415.

from pay telephones located in jail are not commissary funds and must be deposited with the treasurer).

However, in Attorney General Opinion GA-0814, this office considered whether proceeds derived from a commissary's sale of prepaid telephone cards to inmates constitute "commissary funds" subject to the sheriff's control. Tex. Att'y Gen. Op. No. GA-0814 (2010) at 1. Noting that the prepaid phone cards were to be purchased by the sheriff for resale to the inmates in the commissary, the opinion reasoned that they would be "indistinguishable from any other item that might be sold in a county jail commissary" and, therefore, revenue derived from selling the cards would constitute commissary proceeds subject to the exclusive control of the sheriff. *Id.* Reconciling that opinion with other precedent, this office summarized: "Revenue deriving from prepaid phone cards are part of the sheriff's commissary proceeds, which may be held outside the county treasury, whereas revenue from pay telephones and telephone services are not, in which case they are paid to the county treasurer." Tex. Att'y Gen. Op. No. KP-0079 (2016) at 3.

You tell us that the service provider has integrated the PIN debit accounts with an automated "commissary" system, whereby an inmate may choose to allocate funds from the inmate's trust account either to place an order for commissary items or to purchase "debit calling funds" for their PIN debit telephone accounts. Request Letter at 2-3. As you describe the arrangement, the inmate purchases "phone time" directly from the phone service provider, not the jail commissary. *Id.* Without a purchase from the commissary, the funds used by the inmate to obtain phone service never become "commissary proceeds" or "commissary funds" subject to the sheriff's exclusive control. *See* TEX. LOC. GOV'T CODE § 351.0415(b)(1). Accordingly, revenue derived from money allocated from an inmate trust fund account to a phone service provider's PIN debit account must be credited to the general fund of the county, not to the commissary funds under the exclusive control of the sheriff.

S U M M A R Y

Revenue derived from money allocated from an inmate trust fund account to a phone service provider's PIN debit account without passing through a facility's commissary account as described in section 351.0415 of the Local Government Code must be credited to the general fund of the county, not to the commissary funds under the exclusive control of the sheriff.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, slightly slanted style.

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