



THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

June 29, 2023

The Honorable David A. Levy  
Archer County Attorney  
Post Office Box 1186  
Archer City, Texas 76351

**Opinion No. JS-0005**

Re: Questions related to the use of a sheriff's commissary funds for a vehicle to transport inmates to medical appointments (RQ-0494-KP)

Dear Mr. Levy:

You ask various questions related to a county sheriff's use of commissary funds to acquire a vehicle for the transport of inmates to and from medical and mental health appointments.<sup>1</sup> You explain that "[i]nmates in the Archer County jail requiring anything other than routine medical care must be transported from Archer City to Wichita Falls for treatment" and that the sheriff of Archer County "has identified a need to have a dedicated vehicle<sup>2</sup> equipped to safely provide transportation of inmates for medical and mental health treatment." Request Letter at 1 (footnote added).

You further explain that Archer County ("County") leases patrol vehicles for the sheriff's department, that a 2018 Chevrolet Tahoe ("Tahoe") "has recently come off lease," and that there is "a balance remaining to purchase the vehicle outright of \$10,000.00." *Id.* You state the "[c]urrent estimated market value of the vehicle is \$20,000.00, leaving an equity of approximately \$10,000.00," and that it is the usual "practice of the Archer County Commissioners Court to apply any such equity to the lease of a new replacement vehicle to reduce the lease amount on the new vehicle." *Id.* at 1–2.

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<sup>1</sup>See Letter from Honorable David A. Levy, Archer Cnty. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 2 (Jan. 3, 2023), <https://texasattorneygeneral.gov/sites/default/files/request-files/request/2023/RQ0494KP.pdf> ("Request Letter"). Just as you appear to do, we use the term "appointment" to refer to both medical and health appointments and medical and mental health treatment. See Request Letter at 1–2.

<sup>2</sup>We understand a "dedicated vehicle" to mean a vehicle exclusively allocated to or intended for the purpose of transporting the inmates for medical and mental health appointments.

**Acquiring a vehicle dedicated to safely transporting inmates to and from medical and mental health appointments is likely a permitted use of commissary funds.**

You ask whether acquiring a vehicle to safely transport inmates to and from medical and mental health appointments is a permitted use of commissary funds under Local Government Code subsection 351.0415(c)(5), or whether such an acquisition is more properly classified as a “budgetary operating expense” under subsection 351.0415(g). *Id.* at 2.

Local Government Code subsection 351.0415(a) authorizes a county sheriff to operate a commissary for the use of inmates committed to the county jail. *See* TEX. LOC. GOV’T CODE § 351.0415(a) (authorizing the sheriff to operate a commissary). A county jail must have a written plan approved by the Commission on Jail Standards (“Commission”) which provides, among other things, “that all expenditures from commissary proceeds be made in accordance with the Local Government Code, [section] 351.0415.” 37 TEX. ADMIN. CODE § 291.3(5) (2023) (Tex. Comm’n on Jail Standards, Inmate Commissary Plan). While not a separate entity, the “commissary fund” is a special budgetary fund that consists of the revenue derived from items sold at the commissary.<sup>3</sup> *See Mills v. State*, 941 S.W.2d 204, 208 (Tex. App.—Corpus Christi 1996, pet. ref’d) (explaining that the sheriff’s department is a branch of the county government, the sheriff has control over commissary funds, and that commissary funds are spent in association with the county jail operation); Tex. Att’y Gen. Op. Nos. JC-0122 (1999) at 3 (explaining that “[s]ection 351.0415 is one of a growing number of statutes authorizing the creation of special funds”), GA-0814 (2010) at 4 (concluding that revenue from the sale of prepaid phone cards in the county jail commissary should be credited to the sheriff for the use of county jail inmates rather than to the general fund of the county). The county sheriff “has exclusive control of the commissary funds[.]” TEX. LOC. GOV’T CODE § 351.0415(b)(1). However, the sheriff may use the proceeds “only” for certain enumerated purposes described in subsection 351.0415(c). *See id.* § 351.0415(c). Relevant to your question, subsection 351.0415(c)(5) provides that a sheriff may use commissary proceeds to “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)(5).

Our previous opinions construing subsection 351.0415(c)(5) clarify that an expenditure must fall within the purview of the categories expressly articulated in the subsection and cannot be too remote. *See* Tex. Att’y Gen. Op. Nos. KP-0159 (2017) at 2 (questioning whether expenditures for a deputy who was not assigned to the jail but might possibly be called to respond to an inmate riot were too remote to be reasonably considered a permissible expenditure under subsection 351.0415(c)(5)), GA-0901 (2011) at 3 (concluding expenditures appeared to fall within the category of an “educational program,” as well as the funding of “equipment, programs, services, and activities”). Additionally, an expenditure must actually provide for the well-being, health, safety, and security of the county jail inmates and the jail facility. *See* Tex. Att’y Gen. Op.

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<sup>3</sup>*See* TEX. ASSOC. OF COUNTIES, 2021 SPECIAL & DEDICATED FUNDS (2021) at 1–2, 33–35, available at <https://www.county.org/TAC/media/TACMedia/Legal/Legal%20Publications%20Documents/2021/2021-Special-and-Dedicated-Funds.pdf> (explaining that the protocol regarding commissary fund proceeds is one of several exceptions to the default rule in Texas counties that a county’s commissioner’s court determines how county money is spent).

No. KP-0159 (2017) at 2 (opining that using commissary funds on general staff “recruitment, training, and development, and not specifically for the staffing of programs or services that provide for the ‘well-being, health, safety, and security of the inmates and the facility,’ would fall outside the scope of subsection 351.0415(c)(5)”).

Under those parameters, a court would likely conclude that acquiring a vehicle dedicated exclusively to the purpose of safely transporting inmates to and from medical and mental health appointments, as opposed to general use by law enforcement personnel, qualifies as equipment, a program, a service, or an activity that provides “for the well-being, health, safety, and security of the inmates and the facility” pursuant to subsection 351.0415(c)(5).<sup>4</sup> TEX. LOC. GOV’T CODE § 351.0415(c)(5). Yet 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[.]”). As we have routinely noted, the statute grants the county sheriff the power to make this determination in the first instance, subject to administrative and judicial review. *See, e.g.,* Tex. Att’y Gen. Op. No. KP-0271 (2019) at 2.

Assuming the sheriff concludes that acquiring a vehicle dedicated to safely transporting inmates to and from medical and mental health appointments qualifies as a permitted use of the commissary proceeds under Local Government Code subsection 351.0415(c)(5), we next consider your question about the process of acquiring the vehicle.

**A sheriff likely has authority to lease a vehicle with commissary funds without first seeking the approval of the commissioners court.**

As to the process of acquiring a vehicle, we understand you to ask whether a sheriff needs the county commissioners’ approval in order to lease a vehicle with commissary funds. Request Letter at 2. Subsection 351.0415(b)(1) gives the sheriff (or the sheriff’s designee) “exclusive control” of the commissary funds. TEX. LOC. GOV’T CODE § 351.0415(b)(1). For purposes of subsection 351.0415(b)(1), this office has defined “exclusive” to mean “vested in one person alone” and “control” to mean “the function or power of directing and regulating; domination, command, sway.” Tex. Att’y Gen. Op. Nos. GA-0791 (2010) at 3, JC-0122 (1999) at 4. Subsection 351.0415(b)(1) vests sole authority in the sheriff to direct and regulate the commissary funds. Moreover, the sheriff is authorized to use commissary proceeds to “fund” the items in subsection 351.0415(c)(5). TEX. LOC. GOV’T CODE § 351.0415(c)(5). Nothing in section 351.0415 suggests the sheriff must seek approval of the commissioners court before exercising these powers. Thus, a court would likely conclude a sheriff has authority to lease a vehicle with commissary funds without first seeking the approval of the commissioners court. *See* Tex. Att’y Gen. Op. No.

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<sup>4</sup>Because of this conclusion, we do not reach your alternative question whether the purchase of a vehicle for the transport of inmates to and from medical and mental health appointments would constitute a budgetary operating expense. *See* Request Letter at 2.

JC-0122 (1999) at 4 (concluding that “a sheriff may contract to expend commissary proceeds without the commissioners court’s assistance”).<sup>5</sup>

**The commissioners court may generally spend county funds only in strict compliance with the budget.**

You also ask whether the commissioners court may use money from the general fund to pay insurance and maintenance costs for a vehicle that is leased using commissary funds. Request Letter at 2.

The commissioners court is authorized to oversee the fiscal operation of the county by approving and authorizing a budget. *See generally* TEX. LOC. GOV’T CODE §§ 111.001–.096. Local Government Code chapter 111, subchapter A, governs budget preparation in counties with a population of 225,000 or less.<sup>6</sup> *See id.* §§ 111.001–.014 (comprising subchapter A). When reviewing a proposed budget, the commissioners court in such a county has discretion to “make any changes in the proposed budget that it considers warranted by the law and required by the interest of the taxpayers.”<sup>7</sup> *Id.* § 111.008(b). The allocation of county funds in the budget is a policy-making determination the Legislature has generally left to the discretion of the commissioners court. *See Hooten v. Enriquez*, 863 S.W.2d 522, 529 (Tex. App.—El Paso 1993, no writ); *but see Henry v. Cox*, 520 S.W.3d 28, 37 (Tex. 2017) (stating a court may “set aside decisions or actions of the commissioners court that are illegal, unreasonable, or arbitrary”). After final approval of the budget, the commissioners court may generally “spend county funds only in strict compliance with the budget[.]” TEX. LOC. GOV’T CODE § 111.010(b). In sum, whether a

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<sup>5</sup>*See also Mills*, 941 S.W.2d at 208 (“Although the sheriff may have exclusive control of commissary funds and some discretion in how those funds are spent, commissary proceeds are subject to county oversight and may be spent only for limited purposes associated with the county jail operation.”); Tex. Att’y Gen. Op. No. GA-1094 (2014) at 1–2 (acknowledging that the county commissioners court has some oversight over the commissary accounts via annual examinations of the accounts by the county auditor under subsection 351.0415(d)).

<sup>6</sup>According to the 2020 Census, Archer County’s population is just below 9,000. *See Quick Facts*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/archercountytexas/POP010210> (last visited Apr. 26, 2023).

<sup>7</sup>Whether a budget expenditure is authorized by law may turn on local circumstances. For instance, “[e]ach county jail must comply with the minimum standards and the rules and procedures of the Commission on Jail Standards.” TEX. LOC. GOV’T CODE § 351.002. The Commission’s rules require “[e]ach facility [to] have and implement a written plan, approved by the Commission, for inmate medical, mental, and dental services.” 37 TEX. ADMIN. CODE § 273.2 (Tex. Comm’n on Jail Standards, Health Services Plan); *see also id.* § 253.1(8) (Tex. Comm’n on Jail Standards, Definitions) (providing that a county jail may be referred to as a “facility”). The plan must “provide procedures that shall give prisoners the ability to access a health professional at the jail or through a telehealth service 24 hours a day or, *if a health professional is unavailable at the jail or through a telehealth service, provide for a prisoner to be transported to access a health professional . . .*” *Id.* § 273.2(14) (Tex. Comm’n on Jail Standards, Health Services Plan) (emphasis added). And “[t]he owner/operator of each facility shall provide medical, mental, and dental services in accordance with the approved health services plan.” *Id.* § 273.1 (Tex. Comm’n on Jail Standards, Health Services). Therefore, budgeting for vehicle insurance and maintenance may be a necessary expenditure in order to comply with a Commission-approved health services plan. Other statutes might also authorize such expenditures. *See, e.g.*, TEX. CIV. PRAC. & REM. CODE §§ 101.027(a) (generally authorizing governmental units to purchase liability insurance), 101.001(3)(B) (defining “governmental unit” to include a county); TEX. GOV’T CODE § 612.005(b) (requiring counties to secure insurance for their peace officers to cover liability to third parties arising from the operation of motor vehicles).

commissioners court may use money from the general fund to pay insurance and maintenance costs on a vehicle leased with commissary funds depends on whether the expenditure is provided in the budget.

Finally, we turn to your questions about the purchase of a particular vehicle with commissary funds.

**Local Government Code subsection 263.152(a)(1) applies to county-owned surplus property.**

You ask whether “the Archer County Commissioners Court [may] permit the sale of the [Tahoe] by the leasing company directly to the Commissary Fund without declaring the vehicle surplus pursuant to Local Government Code [section] 263.152(a)(1) and soliciting bids from prospective purchasers[.]” Request Letter at 2. The answer to this question depends, in part, on the terms of the lease agreement. You do not provide the agreement, nor do you provide information about the specific provisions of the agreement. *See id.*; *see also* Tex. Att’y Gen. Op. No. KP-0350 (2021) at 2 (explaining “this office does not ordinarily construe contracts” in the opinion process). Nevertheless, we can advise you generally as to legal principles relevant to your question.

Local Government Code subsection 263.152(a)(1) provides that “[t]he commissioners court of a county may . . . periodically sell *the county’s surplus* or salvage *property* by competitive bid or auction[.]” TEX. LOC. GOV’T CODE § 263.152(a)(1) (emphasis added). “Surplus property” means “personal property that: (A) is not salvage property<sup>8</sup> or items routinely discarded as waste; (B) is not currently needed by its *owner*; (C) is not required for the *owner’s* foreseeable needs; and (D) possesses some usefulness for the purpose for which it was intended.” *Id.* § 263.151(2) (emphasis and footnote added).

It is undisputed that a vehicle is personal property, as opposed to real property. While the Legislature does not define the term “personal property” as used in section 263.151, it is commonly understood to mean “everything that is subject to ownership not falling under the definition of real estate.” *San Antonio Area Found. v. Lang*, 35 S.W.3d 636, 640 (Tex. 2000). But Local Government Code subsection 263.152(a)(1) applies only to personal property *owned* by the county. *See* TEX. LOC. GOV’T CODE §§ 263.151(2), .152(a)(1). Whether a county owns a piece of personal property depends on the terms under which the county acquires the personal property. *See* Tex. Att’y Gen. Op. No. GA-0533 (2007) at 3 (explaining, in the context of whether a county can bid or auction off a forfeited eight-liner in accordance with subsection 263.152(a)(1), “[w]hether the County is the ‘owner’ of such property *would depend on the terms of the court’s order of forfeiture*” (emphasis added)). Assuming, though, that the lease agreement here does not state that the County

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<sup>8</sup>“Salvage property” means “personal property, other than items routinely discarded as waste, that because of use, time, accident, or any other cause is so worn, damaged, or obsolete that it has no value for the purpose for which it was originally intended.” TEX. LOC. GOV’T CODE § 263.151(1).

owns the Tahoe until it exercises its option to purchase the vehicle, it does not yet own the Tahoe.<sup>9</sup> To the extent the County does not own the Tahoe, Local Government Code subsection 263.152(a)(1) does not apply.<sup>10</sup>

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<sup>9</sup>Tax Code subsection 11.11(h) demonstrates that if the Legislature intends for property subject to a lease-purchase agreement to be considered property owned by a county, it knows how to do so. *See* TEX. TAX CODE § 11.11(h) (“For purposes of this section, tangible personal property is owned by this state or a political subdivision of this state if it is subject to a lease-purchase agreement” providing that “the state or political subdivision, as applicable, is entitled to compel delivery of the legal title to the property to the state or political subdivision, as applicable, at the end of the lease term.”); *see also* *PPG Indus., Inc. v. JMB/Houston Ctrs. Partners Ltd. P’ship*, 146 S.W.3d 79, 84 (Tex. 2004) (noting that “[a] statute’s silence can be significant” and that an analysis begins with the presumption that the Legislature knows how to enact what it intends). The Legislature has not done so for purposes of Local Government Code subsection 263.152(a)(1). *See* TEX. LOC. GOV’T CODE §§ 263.151, .152.

<sup>10</sup>Because this a fact question, we cannot definitively address through the opinion process, we do not reach your contingent question whether the equity in the Tahoe remains an asset of the general fund or is transferred to the commissary fund. *See* Tex. Att’y Gen. Op. No. KP-0422 (2022) at 5 (acknowledging that inquiries involving fact questions are “beyond the scope of an Attorney General opinion”); Request Letter at 2 (“If the answer to question [one] is yes, does the equity in the vehicle remain an asset of the General Fund or is it transferred to the Commissary Fund along the vehicle?”).

**S U M M A R Y**

While it is a determination for the sheriff of Archer County in the first instance, a court would likely conclude that the acquisition of a vehicle dedicated to safely transporting inmates to and from medical and mental health appointments qualifies as equipment, a program, a service, or an activity that provides for the well-being, health, safety and security of inmates and a jail facility and thus, is a permissible use of commissary funds under Local Government Code subsection 351.0415(c)(5).

Because of a sheriff's "exclusive control" of commissary funds under subsection 351.0415(b)(1) and ability to "fund" the items in subsection 351.0415(c)(5) of the Local Government Code, a court would likely conclude that a sheriff has authority to lease a vehicle with commissary funds without first seeking the approval of the commissioners court.

Whether a commissioners court may use money from the general fund to pay insurance and maintenance costs on a vehicle acquired with commissary funds depends on whether the expenditure is provided in the budget.

Local Government Code subsection 263.152(a)(1) applies to surplus property owned by a county. Whether a particular vehicle is owned by Archer County is a fact question that cannot be resolved in the opinion process.

Very truly yours,



JOHN SCOTT  
Provisional Attorney General of Texas

BRENT WEBSTER  
First Assistant Attorney General

LESLEY FRENCH  
Chief of Staff

D. FORREST BRUMBAUGH  
Deputy Attorney General for Legal Counsel

AUSTIN KINGHORN  
Chair, Opinion Committee

CHRISTY DRAKE-ADAMS  
Assistant Attorney General, Opinion Committee