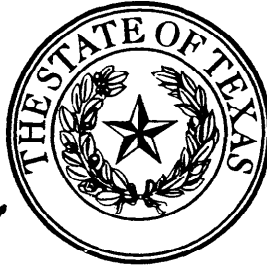


TEXAS COMMISSION ON JAIL STANDARDS

EXECUTIVE DIRECTOR

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RQ-0390-JC

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JUN 12 2001

OPINION COMMITTEE

June 8, 2001

Hon. John Cornyn
Texas Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

FILE # ML-42029-01
I.D. # 42029

Dear General Cornyn,

Please accept this letter as a formal request for an Attorney General's Opinion regarding an interpretation of Chapter 511.009A of the Government Code. Our inquiry relates to the definition of "inspect" under a particular provision of our act. Specifically, the issue is whether "inspect" is limited to a physical inspection of a jail under § 9A or whether it may include the inspection of construction documents submitted to the Texas Commission on Jail Standards ("Commission") by the county building the jail prior to the jail being built.

In 1989, § 9A was added to Chapter 511 of the Government Code. The section, emphasis added, reads:

Fire Sprinkler Head Inspection.

- (a) On the request of a sheriff, the commission shall *inspect a facility* to determine whether there are areas in the facility in which fire sprinkler heads should not be placed as a fire prevention measure. In making a decision under this section, the commission shall consider:
- (1) the numbers and types of inmates having access to the area;
 - (2) the likelihood that an inmate will attempt to vandalize the fire sprinkler system or commit suicide by hanging from a sprinkler head; and
 - (3) the suitability of other types of fire prevention and smoke dispersal devices available for use in the area.
- (b) *If the commission determines that fire sprinkler heads should not be placed in a particular area within a facility, neither a county fire marshal nor a municipal officer charged with enforcing ordinances related to fire safety may require the sheriff to install sprinkler heads in that area.*

Sheriff Terry G. Box, Chair
Marvalette C. Fentress, Vice Chair
Judge Larry T. Craig, Tyler

Gonzalo R. Gallegos, San Antonio
Commissioner J. L. Jackson, Carrollton
Patrick O. Keel, Austin

Kelly McVay, Nacogdoches
Sheriff Ted Montgomery, Dumas
Dr. Adela S. Valdez M.D., Harlingen

Among other duties, the Commission is statutorily charged with creating minimum standards for the construction, equipment, maintenance and operation of county jails, as well as care, custody and treatment of prisoners. See § 511.009 (a) (1) and (2). The Commission is committed to appropriate fire safety standards in county jails. See 37 TAC 263.1 et seq. for the standards. Fire safety in jails, however, present unique issues that don't exist in other public institutions and businesses that are otherwise regulated by county and municipal fire codes. First, jails house confined individuals whose freedom of movement is obviously limited. Second, those individuals are confined against their will and are sometimes considered a suicide risk and fire sprinklers have been used by inmates to commit suicide. Finally, inmates have been known to vandalize sprinklers in an effort to create tools and weapons or to create disturbances by maliciously setting them off.

For these reasons that are particular to jails, the legislature added § 9A(b), which grants the Commission final authority on the placement of sprinklers. Specifically, if the conditions set forth in § 9A(a) (1)-(3) are satisfied, the Commission may over rule the county fire marshal or a municipal officer charged with enforcing ordinances related to fire safety on the placement of sprinklers. Recently, the question has been raised about the application of §9A in the preconstruction phase of building a jail. Specifically, may the Commission "inspect" the construction documents prior to the building of the jail and make a determination under § 9A(b) about the location of the sprinklers? For purposes of this letter, "construction documents" means a set of blueprints with the architect of record's seal affixed and signed and that are issued to contractors for the construction of a facility. Also, "preconstruction" means that the jail itself is in the planning stage and no physical building has yet been constructed.

The conflict arises in the preconstruction phase of a jail where a local fire ordinance requires the architect to draw a sprinkler at a particular location. If that location creates a safety risk for the jail or is in some way objectionable, then the county will request under § 9A that the Commission set aside the local ordinance. As set forth above, § 9A requires provides that the commission shall *inspect a facility* to determine whether there are areas in the facility in which fire sprinkler heads should not be placed as a fire prevention measure. A physical inspection of the jail at this stage is impossible since all that exists are construction planning documents and no physical building. Since the jail has not yet been built and the Commission cannot physically inspect the facility, can the Commission interpret "inspect" to include a review of the construction documents?

The Commission has taken the position since § 9A was passed that it could "inspect" construction documents to satisfy the requirements of § 9A. There are several reasons for this interpretation. First, the legislative history of the provision indicates that the legislature considered that the Commission would inspect construction documents. Our review indicates that the legislature was aware of the need for county jails to approach the Commission for final approval on sprinkler location prior to building their jails, even though § 9A does not distinguish between preconstruction and post construction inspection.

Second, the organic statute of the Commission, Chapter 511 Texas Government Code, and the rules promulgated by the Commission¹, do not define “inspect” or “inspection”, nor do they limit the Commission to a physical inspection of post construction jails. We have, therefore, undertaken our responsibilities under § 9A in a way that appears to be consistent with the dictionary definition of “inspection”, which has been to critically evaluate, scrutinize and investigate. These documents, which are a detailed schema of the proposed jail, provide sufficient information for the Commission to make a determination under § 9A (1)-(3).

Finally, limiting § 9A to a physical inspection of the post constructed jail could lead to additional costs for retrofitting. If § 9A is interpreted to mean that the Commission can have final authority only upon a physical inspection of the sprinklers, a county who follows their architect’s rendition when they build their jail could face an extraordinary financial burden if they later must retrofit their new jail to comply with the Commission’s determination of sprinkler location. In this regard, § 9A serves the utilitarian purpose of allowing the county to plan its fire safety in advance of building its jail so that taxpayer dollars won’t be needlessly wasted on retrofitting.

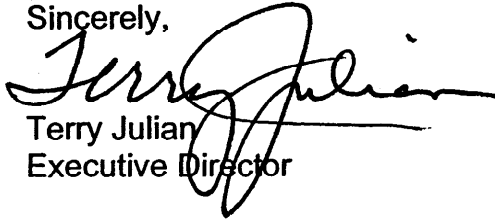
Please note that the backdrop for this review of construction documents is a set of administrative rules (see 37 TAC 257.1 - 257.11) that require the Commission to approve all new jail construction in advance. Please reference 37 TAC 257.4, which requires counties to submit construction documents, and 37 TAC 257.6, which grants the Commission the authority to approve building of the jail. See also 37 TAC 263.90, which requires jails to submit drawings related to life safety and emergency equipment to the Commission. In addition, the Commission has on staff a “Planner”, who is trained and qualified to evaluate construction documents. Our Planner has sufficient skills to evaluate the requirements of § 9A(a)(1)-(3) from a review of the construction documents. The Commission, therefore, is in a superior position to evaluate fire safety prior to construction of a jail. For more information on our life safety rules, including rules related to fire safety, see 37 TAC 263.1 - .70.

The Commission is not aware of any study done on Texas jails relating to sprinklers and we do not take issue with the life saving value of water when fighting fire. In fact, our standards permissively allow sprinklers and require approved standpipes and hoses. See 37 TAC 263.52. In addition, it is important to note that sprinklers are only one component of fire safety in a jail. As set forth at 37 TAC 263.51, the Commission requires smoke removal management as well. Anecdotal evidence suggests that smoke removal is a more serious factor for inmates in jails than flames.

¹See 37 TAC 251, 253, 255, 257, 259, 260, 261, 263, 265, 267, 269, 271, 273, 275, 277, 279, 281, 283, 285, 287, 289, 291, 297, 299, 300 and 301.

I hope this letter provides you with sufficient information to understand our question regarding § 9A. Should you need more information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Julian". The signature is fluid and cursive, with a large initial "T" and a long, sweeping underline that extends across the printed name below it.

Terry Julian
Executive Director