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RQ-0629-JC

October 31, 2002

U.S. CERTIFIED MAIL NO. # 7000 0600 0023 0884 9667

Honorable John Cornyn
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-42883-02
I.D. # 42883

Re: Request for Attorney General Opinion

Dear General Cornyn:

On behalf of the Honorable Weldon Lucas, Denton County Sheriff, I am seeking an opinion from your office. I request your opinion on the following question:

May the revenues generated from the inmate telephone contract be used by the Commissioners Court for any legitimate public purpose or must they be spent for the benefit, education and welfare of the inmates of the Denton County Jail and if so, how is that defined?

The Denton County Commissioners Court has for several years entered into a contract with a telecommunications company to provide local and long-distance telephone services to the inmates of the Denton County Jail. The revenues generated from that contract are deposited into the County's general fund.

Attorney General Opinion DM-19 (1991) makes it clear that the money generated from such a contract is to be paid to the county treasurer. The Denton County Treasurer deposits these funds into the County's general fund according to Texas

Constitution Art. VIII §9 and Tex. Loc. Gov. Code §113.004 (a) and (b) (3). The allocation of county funds is within the discretion of the commissioners court. Texas Constitution Art. V §8, and Anderson v. Wood, 152 S.W.2d 1084, 1086 (Tex. 1941).

However, Letter Opinion No 97-030, dated April 3, 1997, states, "We believe that revenues generated by providing access to telephone service, as required by commission rule, should be treated in the same fashion, even in the absence of legislation dictating that result." The "fashion" referred to in L.O. No. 97-030, is the use of profits from the sheriff's jail commissary. Tex. Loc. Gov. Code §351.0415 (c) states:

"The sheriff may use commissary proceeds only to:

- (1) fund, staff, and equip a program addressing the social needs of the county prisoners, including an educational or recreational program and religious or rehabilitative counseling;
- (2) supply county prisoners with clothing, writing materials, and hygiene supplies;
- (3) establish, staff, and equip the commissary operation; or
- (4) fund, staff, and equip a library for the educational use of county prisoners."

L.O. No 97-030, by this sentence, seems to direct the commissioners court to utilize the telephone contract revenues in accordance with §351.0415 (c). Please advise if that is the opinion of your office.

Thank you for your time and consideration in this matter. If you need any additional information to make a determination in this case, please do not hesitate to call.

Sincerely,



Bruce Isaacks

cc: Denton County Commissioners Court
Hon. Weldon Lucas, Denton County Sheriff
Carmen Rivera-Worley, Assistant District Attorney, Chief Civil Division
James Wells, County Auditor
Donna Stewart, Budget Director
Amy Phillips, Human Resources Director
Hugh Coleman, Assistant District Attorney, Counsel to the Sheriff