

STATE OF TEXAS  
HOUSE OF REPRESENTATIVES

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Yvonne Davis  
CHAIR

FILE # ML-46168-09  
I.D. # 46168

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OPINION COMMITTEE

COMMITTEE ON URBAN AFFAIRS

September 2, 2009

The Hon. Greg Abbott, Attorney General  
State of Texas  
Post Office Box 12458  
Austin, Texas 78711-2548

**RQ-0823-GA**

Dear Attorney General Abbott:

I am requesting an Attorney General's Opinion as to whether it is a violation of Texas State law for a person holding the office of Sheriff to accept a fee from a third party who contracts with the Sheriff's county as a Lessee/Operator of a county jail. The fee, based upon inmate count, would ostensibly be for the Sheriff's administrative responsibilities. The Sheriff would be required to approve of the contract before the county could enter into such an agreement with a third party. While there are several such contracts currently in effect within the State of Texas, I am not requesting an opinion for any certain contract, but am asking generally.

The Texas Local Government Code (Section 351.041) clearly grants statutory duty to the sheriff to be the keeper of the county jail and county prisoners, but also authorize the right to appoint a jailer to operate the county jail. However, Section 351.101, of the same code, states that the county is authorized to contract with a private organization to operate the county jail, providing that the sheriff approves of the contract.

I have been unable to find any constitutional or statutory authority which allows a sheriff to be offered or to accept an administrative fee paid by a private organization. To the contrary, the sheriff's duties regarding county prisoners are clear. A sheriff's salary/compensation includes being paid for the safe keeping of county prisoners.

The fact that a county cannot enter into a contract for jail services from a private organization without the approval of the sheriff creates a situation which arguably brings into play the following questions under the scenario outlined:

1. Is there any constitutional or statutory authority which allows a sheriff to be offered or to accept an administrative fee paid by a private organization?

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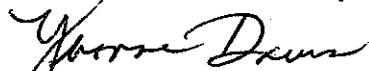
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2. Does the acceptance of such an administrative fee by the sheriff constitute or is it tantamount to having a "financial interest" in the private organization which violates Section 351.101 of the Texas Local Government Code and causes the contract to be void?
3. Is the payment or acceptance of an administrative fee to the sheriff, who must first approve the contract between the county and a private organization wishing to operate a facility for county prisoners, a violation of any criminal laws?

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I respectfully request your attention to this request.

Sincerely,



Yvonne Davis, Chair  
House Committee on Urban Affairs  
Texas House of Representatives