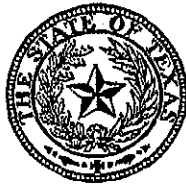


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OPINION COMMITTEE



FILE # ML-46250-09
I.D. # 46250

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November 10, 2009

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, TX 78711-2548

RQ-0841-GA

RE: Request for Opinion

Dear General Abbott:

Pursuant to Section 402.043 of the Texas Government Code, I am requesting an opinion from your office regarding the following issues: (1) Whether a county sheriff has sole discretion to manage and invest funds generated from the county jail's commissary under Texas Local Government Code §351.0415, (2) Whether the commissary funds are funds "belonging to the county" under Texas Local Government Code §113.021, and (3) Whether the interest accruing from the commissary funds belongs to the county or the commissary fund.

Background

Currently, the Aransas County Sheriff operates a commissary for the use of inmates committed to the Aransas County Jail in accordance with Texas Local Government Code §351.0415. The funds generated from this commissary have been deposited by the Sheriff with the County Treasurer, in reliance on Texas Local Government Code §113.021. The interest accruing on the commissary fund account has then been deposited into the general fund for the county since approximately February of 2008, with the principal remaining in a special fund designated solely for the commissary. The sheriff would like to clarify whether or not he is fulfilling his duties imposed by §351.0415, which seems to conflict with the requirements of §113.021.

Applicable Law

Texas Local Government Code §351.0415(a) provides that the sheriff of a county may operate a commissary for the use of inmates committed to the county jail. Section (b) provides that the sheriff has exclusive control of the commissary funds and shall maintain commissary accounts showing the amount of proceeds from the commissary operation and the amount and purpose of disbursements made from the proceeds. Section (c) states that the sheriff may only

use commissary proceeds for the following five reasons: (1) to fund, staff, and equip a program addressing the social needs of the inmates, including an educational or recreational program and religious or rehabilitative counseling, (2) to supply inmates with clothing, writing materials, and hygiene supplies, (3) to establish, staff, and equip the commissary operation and fund the salaries of staff responsible for managing the inmates' commissary accounts, (4) to fund, staff, and equip both an educational and a law library for the educational use of inmates, or (5) 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.

Texas Local Government Code §113.021(a) provides that the fees, commissions, funds, and other money belonging to a county shall be deposited with the county treasurer by the officer who collects the money. Section (b) states that the county treasurer shall deposit the money in the county depository in a special fund to the credit of the officer who collected the money. Section (c) then provides that the interest accruing on the money in the special fund is for the benefit of the county in accordance with other law.

Possible Interpretations

The above statutes are unclear as to which takes precedence over the other. One possible interpretation is that §351.0415 controls since section (b) of that statute states that the sheriff has *exclusive* control of the commissary funds and that he may *only* use commissary proceeds for the five purposes stated in section (c). Thus, the sheriff of a county would be required to manage funds generated by the jail's commissary, including making investment decisions regarding them, and use both the principal and interest solely for the purposes stated in section (c). On the other hand, commissary funds could be interpreted to be funds "belonging to a county" under §113.021 which *shall* be deposited with the county treasurer, thus making the interest accruing from such funds property of the county. An intermediate approach could be that the sheriff must deposit the funds with the county treasurer in accordance with §113.021 because the funds "belong to the county", but that section (c)'s requirement that the interest "is for the benefit of the county in accordance with other law" would refer to §351.0415(c) as the "other law," thus meaning the interest could only be used for the five purposes stated in that subsection.

Conclusion

Accordingly, I seek your opinion on this important matter. Please feel free to contact my office if any further information is needed or if I can be of any assistance in this matter.

Sincerely,



Richard P. Bianchi
County Attorney
Aransas County