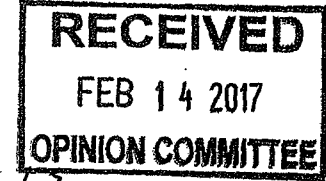


TEXAS COMMISSION ON JAIL STANDARDS

EXECUTIVE DIRECTOR
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February 13, 2017

Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

FILE # ML-48127-17
I.D. # 48127

RQ-0149-KP


RE: Request for opinion regarding expenditures utilizing commissary proceeds pursuant to Tex. Local Gov't Code §351.0415(c)

Pursuant to Tex. Local Gov't Code §402.043, I respectfully request that you provide this office with a formal written opinion regarding the following questions:

1. Would a sheriff's expenditure of commissary proceeds to purchase equipment for a deputy not assigned to the jail qualify as a permitted expenditure pursuant to Tex. Local Gov't Code §351.0415(c)?
2. Would a sheriff's expenditure of commissary proceeds to recruit and fund the salary of a jail employee not part of an inmate program qualify as a permitted expenditure pursuant to Tex. Local Gov't Code §351.0415(c)?

Please see the attached brief addressing the above referenced issues. Thank you for your time and consideration.

Respectfully,


Brandon S. Wood
Executive Director

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STATEMENT OF FACTS

The use of proceeds generated by operating an inmate commissary at a county jail is controlled by Tex. Local Gov't Code §351.0415. A commissary is a sheriff or vendor operated "store" for which county jail inmates may purchase hygiene items and sundries. The Commission has promulgated rules that requires sheriffs to submit a plan regarding the operation of a commissary and must provide that expenditures from commissary proceeds be made under Tex. Local Gov't Code §351.0415. Further, under Government Code §511.016, county auditors are required to submit an audit of the county jail's commissary operations to the Commission.

In 2005, Local Government Code §351.0415 was amended, and the use of commissary proceeds was expanded. Since the amendment, the Commission has received on a regular basis, questions from sheriffs, county officials, and citizens about the legality of what can be purchased or paid for utilizing commissary funds.

Recently, one county has interpreted Local Government Code §351.0415(c) to allow for the compensation and purchase of equipment for a deputy not assigned to the jail. The sheriff's reasoning was that the deputy could be called upon in an emergency, such as a riot, to assist in securing the jail, which justifies the expenditure. Other positions put forward by some sheriffs include the use of commissary proceeds for staff recruitment or training development using the justification that a fully staffed jail or well-trained personnel falls under the "well-being, health, safety and security of the inmates and the facility" section of the statute.

While the Commission does not believe these aforementioned positions were ever the intent of the legislature, determining what is permissible after the statute was amended has been difficult, and your guidance is appreciated. On several occasions, the Commission has recommended that the County Attorney provide the Sheriff an opinion on whether a proposed expenditure meets the criteria outlined in §351.0415(c).

The first four sub-sections of §351.0415(c) clearly define what commissary proceeds may be used for; however, sub-section five is broad when compared to the first four. It is our understanding that the new sub-section was written to allow for the expenditure of commissary proceeds on a broad range of subjects but attempting to determine what is permissible and what is not is difficult.

Based upon our interpretation of the statute, utilizing commissary proceeds for the salaries of jail employees that were part of a program that benefits inmates have never been in question. Programs for inmates include education, recreational, and religious program that serve to benefit and rehabilitate the inmate. Programs used in some jails include GED programs, recreational and law libraries, and jobs programs, such as gardening or animal training.

The social-benefit provision was in place before the statute was amended in 2005 and has always been seen as permissible, but utilizing commissary funds for the salaries of jail staff that is part of the normal operation

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"The Commission on Jail Standards welcomes all suggestions and will promptly respond to all complaints directed against the agency or any facilities under its purview".

To empower local government to provide safe, secure and suitable local jail facilities through proper rules and procedures while promoting innovative programs and ideas

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or sheriff's deputies has not been. When the statute was amended, a new section G was included to ensure that the commissioner's court would not utilize commissary proceeds to fund the budgetary operating expenses of the jail. There was enough of a concern that commissary proceeds would be seen as a supplement to the jail budget by the legislature to include that language which we have used to guide our interpretation.

The Commission requests that you review the matter and issue an opinion at your earliest convenience.

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