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Via U.S. Mail
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711-2548

Dear General Paxton:

On behalf of Washington County, we request your opinion on the following matter.

Background

Through the years, the Office of the Attorney General has issued opinions regarding jail phone services, jail phone cards, use of commissary funds for purchases of jail phone cards, and revenues from the sale of such items. *See e.g.*, Tex. Att’y Gen. Op. No. DM-19 (1991); Tex. Att’y Gen. Op. No. GA-0059 (2003); Tex. Att’y Gen. Op. No. GA-0814 (2010). In compliance with the Texas Administrative Code, the Washington County jail provides phone service for jail inmates through a contract with Global Tel*Link [hereinafter “GTL”]. 37 Tex. Admin. Code § 291.1(2) (requiring reasonable telephonic access between an inmate and his or her attorney, family and friends which may be done on a prepaid or collect basis).

GTL provides this service to Washington County with options for advance pay (prepaid), collect, and now, PIN debit. See attached Exhibit A - Letter dated August 13, 2019 from GTL to Lt. Lowry.¹ Pursuant to the contract, Washington County receives a “70% commission on all call types.” (Exhibit A). The PIN debit option is a newer offering from GTL and has taken the place

¹ Information from materials included as exhibits is underlined in blue if the information is summarized or supportive and highlighted in yellow and underlined in red for directly quoted information.

of the previously ruled upon phone cards. See Tex. Att’y Gen. Op. No. GA-0814 (2010) (ruling on the deposit of funds for prepaid phone cards sold in the jail commissary).

According to the Response to Washington County’s Request for Proposal provided by GTL, “funds for the PIN debit accounts may be provided either by the inmates themselves from their Trust/Commissary accounts, or from their friends and family who may deposit funds directly to Inmate PIN Debit accounts through GTL’s web, kiosk and IVR deposit channels.” See Attached Exhibit B – GTL’s Response to Washington County’s Inmate Communications Proposal Request dated December 27, 2017. The use of the new PIN debit system again creates the question of where to credit the revenues from such purchases.

Question Presented

Is revenue from allocating money from the Inmate Trust Fund to a PIN debit system to pay for phone time at the request of an inmate to be credited to the commissary account or to the general fund of the county?

Discussion

When the prepaid phone cards were in use, the inmates were able to purchase phone cards in pre-determined denominations from the jail commissary. In those instances, the Office of the Texas Attorney General ruled that the revenue obtained through the sale of the prepaid phone cards should be credited to the Sheriff and placed into the commissary fund. Tex. Att’y Gen. Op. No. GA-0814 (2010). This ruling was followed by Washington County and the Sheriff’s Office deposited the revenues from purchases of prepaid phone cards from the commissary into the commissary fund; while the revenues from the toll calls and collect calls were deposited into the general fund.

With the new PIN debit system, inmates no longer purchase phone cards as a commissary item, rather they are able to allocate money in their Inmate Trust Fund account to 1) commissary items or 2) “phone time.” “Phone time” is a separate option on the Washington County Jail’s automated system;² the entirety of which is provided by GTL.

According to the GTL Response to Request for Proposal, GTL also provides “integration to the Lone Star Commissary System that allows for direct Inmate Debit Account Funding through commissary ordering via the inmate telephones,” such that inmates are able to purchase “debit calling funds directly through call prompts from the inmate phone.” The funds are then moved “in real-time from the inmates commissary/trust account to his/her debit phone account, tied to his/her inmate ID and PIN.”(See Exhibit B).

Some confusion is created with the letter provided to the Washington County Sheriff’s Office from GTL (Exhibit A) which states that “PIN debit calling allows inmates to use their

² As explained by Lt. Marlow Lowry at a meeting held with the County Auditor and County Attorney on August 15, 2019.

commissary funds³ to purchase phone time in the same manner they purchased calling cards” but also that “GTL bills the jail for the debit calling time, minus the 70% discount.” Under the previous system, the calling cards were purchased by the jail and then resold as a commissary item. Now, the county is simply billed for the time, rather than the jail making the purchase in advance and reselling the time. The letter from GTL goes on to opine that the jail keeps the 70% revenue to place in the commissary fund operated by the Sheriff. However, no authority is provided for this position by GTL.

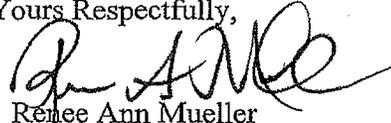
There is now uncertainty between the Sheriff’s Office and the County Auditor’s Office as to which account the revenues from the PIN Debit purchases are to be deposited. The Sheriff’s Office believes that the PIN Debit account phone time purchased with Inmate Trust Account Funds is the equivalent of a commissary purchase and, therefore, are revenues from the sale of commissary items and should be deposited into the commissary fund pursuant to Tex. Attorney General Opinion GA-0814. This opinion seems based upon the fact that the Inmates are able to move the money via the integrated commissary ordering system facilitated by GTL.

The Auditor’s office believes that the revenues should be viewed as phone proceeds and deposited into the county’s General Fund pursuant to the Tex. Attorney General Opinion DM-19. This opinion seems based upon the fact that the county is now billed for the time used by the inmates and is not pre-paid in advance by the Sheriff’s Office purchasing the cards to sell in the commissary.

Further tangling the matter is the fact that GTL also allows other friends and family members to fund the PIN Debit account for phone calls directly, bypassing the Inmate Trust Account and a purchase through the integrated commissary ordering system altogether.

The Washington County Attorney’s Office does not hold an opinion on the matter, but is rather seeking to determine into which account the funds should properly be deposited. We look forward to your opinion on this matter.

Yours Respectfully,



Renee Ann Mueller

Washington County Attorney

CC: *Washington County Sheriff's Office*
Washington County Auditor's Office

³ The Washington County Attorney’s office understands that inmates in Washington County are able to place money in an “Inmate Trust Fund” and that they may be used as “commissary funds” however there is no separate inmate commissary account. The Washington County Attorney’s office believes that when GTL uses the term “commissary funds” they are referring to the money in the Inmate Trust Fund, this is evidenced by their seemingly interchangeable use in using both terms to refer to inmate trust accounts in GTL’s Response to Request for Proposal.