



KERR COUNTY ATTORNEY

ROBERT HENNEKE

COUNTY COURTHOUSE, SUITE BA-103 • 700 MAIN STREET • KERRVILLE, TEXAS 78028

June 24, 2011

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

RE: Request for attorney general's opinion regarding commissary funds and use of proceeds

Dear Attorney General Abbott:

Pursuant to Tex. 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 teach jail inmates to build and maintain a water catchment system to be used to irrigate the jail's inmate garden operated as part of the sheriff's work program 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 pay for training and materials for energy efficient renovations to the county jail in connection with an apprenticeship skills training program for inmates 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Henneke".

Robert Henneke

cc: Kerr County Commissioners Court
Sheriff W.R. "Rusty" Hierholzer



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June 24, 2011

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

RE: Brief in support of request for attorney general's opinion regarding commissary funds and use of proceeds

ISSUE NO. 1: Would a sheriff's expenditure of commissary proceeds to teach jail inmates to build and maintain a water catchment system to be used to irrigate the jail's inmate garden operated as part of the sheriff's work program qualify as a permitted expenditure pursuant to Tex. Local Gov't Code §351.0415(c)?

ISSUE NO. 2: Would a sheriff's expenditure of commissary proceeds to pay for training and materials for energy efficient renovations to the county jail in connection with an apprenticeship skills training program for inmates qualify as a permitted expenditure pursuant to Tex. Local Gov't Code §351.0415(c)?

STATEMENT OF FACTS:

The Kerr County Sheriff operates a work program whereby inmates volunteer to labor and receive credit from the county sentence they are serving. *See* Tex. Crim. Proc. Code §43.10(6). While performing mainly menial, unskilled manual labor tasks, such as mowing the area around the courthouse, the inmates benefit and enjoy this work program because it affords them the opportunity to be outside of the jail (supervised), outside in good weather, and able to exercise through work, in addition to earning time towards their county sentence. The Kerr County Sheriff regularly has more inmate applicants than opportunities to work.

The Kerr County Sheriff operates an inmate garden as part of this work program. The garden covers approximately one acre of land and is situated within the enclosed perimeter at the Kerr County Jail. Inmates volunteer to labor in the garden and receive credit for each day of manual labor from the county sentence they are serving through the

Sheriff's work program. The Sheriff has recruited several certified "Master Gardeners" who volunteer their time overseeing the gardening and teaching inmates horticulture skills. In addition to the benefit of the opportunity to earn additional time off of their sentence, the Sheriff's garden program benefits the recreational, well-being, and health needs of the inmates who participate by allowing them to be outside and to be able to exercise through the work performed. Inmates perform all work manually using hand-tools and hoses provided by the Sheriff.

Kerr County, along with all of central Texas, is in the midst of a historic drought. The City of Kerrville has already ordered Stage 3 Water Restrictions, and the county jail is within the city limits. The absence of foreseeable rainfall and current water restrictions threaten to close the garden program. Even without the current drought conditions, Kerr County does not foresee use of the public water system for irrigation of the jail garden a permanent solution or water source. However, rainwater runoff from the jail roof and condensation from the air conditioning units that service the Kerr County Jail facility produce a large volume of water, which currently drips into the ground. The Sheriff estimates that a water catchment system that collects the condensation runoff from the air conditioning units alone would be ample water to permanently irrigate the jail garden.

The local construction industry has been hard hit by the recent economic downturn. Many individuals serving county jail sentences at some time relied upon these construction jobs and lack skills to seek other employment – perpetrating a cycle of unemployment, poverty, and crime in this community. However, as energy and utility prices rise, Kerr County has also seen a growth in businesses providing energy efficient and environmentally friendly renovations and building techniques. Kerr County has a local business specializing in water catchment system construction that has expressed interest as part of an apprenticeship program proposed by the Sheriff. The concept of this apprenticeship program would be to train and educate inmates in "green" technologies.

At first, this local water catchment system construction business would oversee the construction of a water catchment system to be built by county jail inmates as well as teaching the inmates how such a system is built and training inmates in the maintenance and upkeep of a water catchment system. Besides an exercise so as to educate and train selected inmates in the construction and maintenance of a water catchment system, this system, when complete, would serve to provide the irrigation for the inmate garden, thus allowing this work program to continue.

In addition to allowing the inmates that participate in this construction to earn credit towards their county sentence, this apprenticeship program would be educational for the inmates and would provide for the well-being and health of the inmates through their participation. While the hands-on labor would be provided by participating inmates, Kerr County proposes to pay for the parts and materials, expertise of the local business to oversee the project, and training of the inmates by the local business out of commissary proceeds pursuant to Tex. Local Gov't Code §351.0415(c).

Should this water catchment system construction apprenticeship training program be a success, the Sheriff would expand this apprenticeship program by partnering with area local businesses to teach inmates in the area of energy efficient renovations and skills through hands-on projects performing such renovations on the county jail. Due to the typical skill sets and educational level of its jail inmates, Kerr County believes that, for a job training program to be successful, it needs to be focused around hands-on, on-the-job training as is contemplated with this apprenticeship training program. However, it is unlikely that funds would be available or appropriated for such training and materials, unless those funds could come from use of commissary proceeds.

The Kerr County Jail facility is over fifteen years in age. Its electricity bill alone some months surpasses \$10,000.00. Without having documented every specific project, the Sheriff estimates an abundance of available "green" projects that jail inmates could be trained to perform, thus giving them marketable job skills, while, at the same time, reducing the cost of operating the jail facility through energy efficient renovations. Again, while the hands-on labor would be provided by participating inmates, the parts and materials, expertise of the local business to oversee the project, and training of the inmates would be paid for out of commissary proceeds pursuant to Tex. Local Gov't Code §351.0415(c).

ARGUMENT AND AUTHORITIES:

The sheriff of each county is the keeper of the county jail. Tex. Local Gov't Code §351.041. The sheriff may operate, or contract with another person to operate, a commissary for the use of the inmates committed to the county jail. Tex. Local Gov't Code §351.0415(a). The commissary must be operated in accordance with rules adopted by the Commission on Jail Standards. *Id.*; 37 TAC §291.3. The Kerr County Sheriff does elect to operate a commissary at the county jail by contracting for this service with a private vendor.

The primary focus of interpretations of the commissary operation statute has arisen over disputes regarding control of commissary funds, profits, and proceeds. *See, e.g.*, Tex. Atty. Gen. Op. GA-0814 (2010); Tex. Atty. Gen. Op. DM-19 (1991); Tex. Atty. Gen. Op. GA-0791 (2010). It appears well settled that exclusive control of commissary funds, profits, and proceeds vests with the sheriff. Tex. Local Gov't Code §351.0415(b)(1); Tex. Atty. Gen. Op. GA-0814 (2010).

While who controls commissary funds is well established, interpretation of what commissary profits and proceeds may be spent for remains undeveloped. Generally speaking, profits from operation of a jail commissary must be spent for the benefit, education, and welfare of the jail inmates. Tex. Atty. Gen. Op. MW-143 (1980); Tex. Atty. Gen. Op. GA-0059 (2003). However, no interpretation exists as to whether this proposal would qualify under Tex. Local Gov't Code §351.0415(c), or really, no case law or attorney general opinions have discussed in depth what would or would not constitute a permitted commissary proceed expenditure.

The commissary operation statute, Tex. Local Gov't Code §351.0415(c), provides that the sheriff may "use commissary proceeds only to:

- (1) 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) supply inmates with clothing, writing materials, and hygiene supplies;
- (3) establish, staff, and equip the commissary operation and fund the salaries of staff responsible for managing the inmates' commissary accounts;
- (4) fund, staff, and equip both an educational and a law library for the educational use of inmates; or
- (5) 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."

Expenditure of commissary profits is acceptable if "they help supply the wants of persons confined in jail." Tex. Atty. Gen. Op. MW-143 (1980). The Kerr County Sheriff asserts that its proposed apprenticeship program meets the criteria of Tex. Local Gov't Code §351.0451(c) so as to authorize expenditure of commissary proceeds to pay for the parts, material, and training for the "green" projects and energy efficient skills to be taught to jail inmates.

Such programs would be educational for the inmates, thus addressing their social needs pursuant to Tex. Local Gov't Code §351.0451(c)(1). Such programs would also provide programs and services providing for the well-being and health of the inmates as it would allow inmates to (1) earn credit towards their sentence through the sheriff's work program pursuant to Tex. Crim. Proc. Code §43.10(6); (2) learn a job skill applicable once released; and (3) enjoy the benefit of exercise through productive work.

SUMMARY:

State law mandates that "commissary proceeds may be used only for the purpose described" in Tex. Local Gov't Code §351.0451(c). Tex. Local Gov't Code §351.0451(g). The Kerr County Sheriff is unaware of any other county where commissary proceeds are used to fund the costs of training and materials for such an apprenticeship program as described *supra*.

Therefore, Kerr County requests that the Attorney General issue its opinion agreeing that the Sheriff may expend commissary proceeds to pay for training and materials to establish an apprenticeship program instructing, educating, and training jail inmates through hands-on projects to be done on the county jail in energy efficient and renewable energy job skills, such as the construction of a water catchment system used to irrigate the inmate garden.