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COUNTY OF FANNIN
OFFICE OF THE COUNTY AUDITOR

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October 4, 2024

Honorable Ken Paxton
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Re: Commissary Funds

Dear Attorney General Paxton and the Opinion Committee:

Pursuant to Texas Government Code § 402.042, I respectfully request your opinion on the following question:

Whether, under Texas Local Government Code § 351.0415, a Texas county may use commissary funds to pay the salary of a full-time county employee who staffs a county jail that is operated by a private vendor under contract with the county.

BACKGROUND

Fannin County ("the County") contracts with a private detention company ("the Company") to operate the county jail. The County is considering using commissary funds generated under Local Government Code § 351.0415 to hire a full-time employee who will work at the privately operated jail. The employee's primary duties will include:

1. Monitoring the Company's provision of medical care, mental health procedures, counseling, rehabilitation, education, and other services to inmates;
2. Ensuring the vendor's compliance with the Texas Commission on Jail Standards rules; and
3. Serving as the County's liaison to the Company to ensure inmate needs and grievances are satisfactorily addressed; and
4. Ensure the Company's compliance with the County contract to ensure transparency and effective implementation of inmate programs and services.

The County believes funding this position from the jail commissary account is permitted under § 351.0415(c)(1) and (c)(5). However, the County seeks confirmation of this interpretation through your official opinion.

BRIEF IN SUPPORT OF REQUEST

Section 351.0415 governs county jail commissaries operated by the sheriff or a private vendor.

Subsection (c) limits the permissible uses of commissary proceeds to five enumerated categories. Two of those are relevant here:

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. 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;

Tex. Loc. Gov't Code § 351.0415(c)(1), (c)(5).

The key question is whether these provisions authorize using commissary funds to pay the county employee's salary described above. The plain language suggest they do. Both § 351.0415(c)(1) and (c)(5) allow commissary proceeds to "fund" and "staff" inmate "programs" and "services". The proposed employee's core job functions – monitoring service delivery, ensuring rule compliance, advocating for inmate needs, and overseeing commissary expenditures fit squarely within this statutory language. The employee will be integral to "staffing" the jail's inmate programs and services.

This interpretation effectuates the broader purpose of the commissary statute, which is to endure commissary funds are used for the benefit and welfare of the inmates. An on-site county employee focused on service oversight is well-positioned to ensure commissary funds are spent appropriately, and inmates receive the services and programs to which they are entitled.

In conclusion, the County believes using commissary funds for the proposed employee's salary is consistent with the plain text of § 351.0415(c)(1) and (c)(5). This position "staff[s]" inmate "programs" and "services" aimed at protecting inmates' "well-being, health, safety, and security." It also promotes accountability in the use of commissary proceeds for the benefit of inmates.

Your guidance on whether the County's interpretation is correct would be greatly appreciated.

Respectfully submitted,



Alicia R. Whipple
Fannin County Auditor