



Cherokee County

RUSK, TEXAS

75785

November 1, 2024

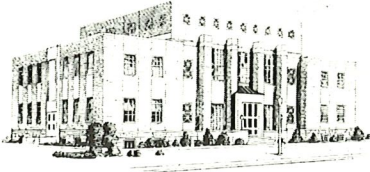
Ken Paxton
Attorney General
Price Daniel Bldg
Attn: Opinions Committee
P.O. Box 12548
Austin, Texas 78701-2548

RE: Revenue from phone card sales sold separately from the Commissary Operations

During an annual audit of the jail in June 2022, it was determined that the revenue from phone PIN debit time transactions was placed in the Commissary account and should be placed in the general fund. This change was implemented. In January of 2024, the Sheriff notified the Auditor's office that the jail would be transitioning to phone card sales in place of phone PIN debit time. The Sheriff indicated the revenue for these phone cards would be placed in the Commissary account. The inmates are no longer able to place phone PIN debit calls using their inmate balance. Our contract with the phone service provider, NCIC, signed by the Commissioner's Court, describes a profit rate, but does not specify the method of phone service delivery. There were no amendments to the contract presented to Commissioner's Court to indicate the change from PIN debit to phone cards. Inmates may call collect or use their inmate balance to buy phone cards. In prior years, when we had phone cards, they were sold at 50% profit. Phone cards are currently being sold at 60% profit (which is the contracted rate).

The Attorney General's Office has consistently held that phone revenue belongs to the general fund of the county. The only exception noted is when phone cards are sold as a sundry in the Commissary, "indistinguishable" from any other commissary item. However, in Cherokee County the sale of phone cards is done in a manner clearly separate from all other commissary items.

Cherokee County uses Sterling as their Commissary provider. In the contract we have granted Sterling "the exclusive right to sell candy, snacks, pastry, beverages, miscellaneous items, clothing, personal hygiene items and food products." Additionally, the contract states that commissions are not paid on telephone card sales and indigent products. To make a purchase from the commissary, inmates would select the "External Service" icon on the kiosk display. From there, they are able to access the order form. Orders are sent to and filled by Sterling. Within the Inmate Trust Fund accounting system, funds allocated from inmate balances to commissary orders enter a fund titled "Commissary". This fund is then used to pay the invoice from Sterling, who subsequently issues a commission check. This commission check is deposited in the Commissary (profit) account.



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Phone cards are not available through the commissary order process described above. The cards are acquired directly from NCIC, our phone provider, and maintained by jail staff. To receive phone cards, inmates select the "Tickets" (grievances) icon on the kiosk display. Inmates would submit a ticket requesting the number of phone cards they would like. These tickets are reviewed, entered into the financial software (Lockdown), and fulfilled by jail staff. The funds allocated from inmate balances for phone card purchases enter a fund titled "Phone Card Fund". A check is written directly from this fund in the Inmate Trust Fund to the Commissary (profit) account.

In the footnotes, KP-0295 states "only when an inmate uses trust funds to make a purchase from the commissary do the funds become commissary proceeds."¹

When the ordering, fulfillment, and fund allocation for phone card transactions is distinct and separate from that of commissary transactions, should phone card revenue go to the general fund or commissary profit account?

Must phone cards be sold the same as any other commissary item for the revenue to be placed in the Commissary profit account? Or can the Sheriff have a second, separate operation for phone card sales and retain the revenue in the Commissary profit account?

Does Commissioner's Court, through their obligation to provide for the jail and contracting authority, have the ability to reinstate the PIN debit system (which was a source of general fund revenue)? Or does the selection of phone service methods solely lie with the Sheriff as keeper of the jail?

Respectfully,

A handwritten signature in blue ink that reads "Steven Daughety".

Steven Daughety
County Auditor
Cherokee County

1. Phone cards are currently purchased using funds from the commissary profit account for resale. However, we do not recognize this origination of funds to constitute a sale through the commissary (operation). We also do not recognize the current resale method to be happening through the commissary (operation) due to the distinction in the processes described. *If the AG finds generally the sheriff's sale of phone cards separate from the commissary operation produces phone revenue for the county*, it is our understanding the purchase of phone cards for this purpose would likely not be a valid expenditure under 351.0415 and should be done through the jail budget.