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Inmate Commissary

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Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Inmate Commissary

Reference Number: CTAS-2125

Tenn. Code Ann. § 71-4-502(5) defines the term "vending facility" as follows: "Vending facility" means a location or structure or space that may sell foods, beverages, confections, newspapers, periodicals, tobacco products, and other articles and services that are dispensed automatically by a machine or manually by sales personnel or attendants and that may be prepared on or off premises in accordance with applicable health laws. A "vending facility" may consist, exclusively or in appropriate combination as determined by the Tennessee Department of Human Services, of automatic vending machines, cafeterias, snack bars, catering services, food concession vehicles, cart services, shelters, counters, and any appropriate equipment necessary for the sale of articles or services described in this subdivision (5). A "vending facility" may encompass more than one (1) building on a public property.

Authority to Operate a Jail Commissary

Counties owe their creation to the statutes, and the statutes confer on them all the powers which they possess, prescribe all the duties they owe, and impress all the liabilities to which they are subject." *State v. Stine*, 292 S.W.2d 771, 772 (Tenn. 1956), quoting *Burnett v. Maloney*, 37 S.W. 689, 693 (Tenn. 1896).

Tennessee statutory law imposes upon the sheriff a multitude of mandatory duties designed to promote an inmate's welfare. T.C.A. § 41-4-101, et seq.

Although there are Tennessee statutes that refer to jail commissaries, under current Tennessee law, there is no authority for a sheriff's office to operate a jail commissary, regardless of whether it is operated on a for profit basis or not for profit basis. Furthermore, engaging in such unauthorized activity may result in undesired consequences. For example, "when a county departs from its governmental activities and engages in a business enterprise for gain, which would ordinarily be taxable and which the county is not authorized to engage in, that it then becomes liable for the tax." *State v. Hamilton County*, 144 S.W.2d 749, 751 (Tenn. 1940). The Rules of the Tennessee Corrections Institute, Rule 1400-1-.15(4) indicates that an inmate commissary may be available by which inmates can purchase approved items that are not furnished by the facility. If one is provided, the commissary operations shall be strictly controlled using standard accounting procedures.

As previously stated, there is no statute specifically authorizing the sheriff to operate a jail commissary or to accept compensation or fees from inmates for providing commissary services. T.C.A. § 5-8-101, which lists the sources of county revenue, and T.C.A. § 8-21-901, which lists fees a sheriff may collect, do not include such payment or compensation.

Pursuant to T.C.A. § 8-21-101, the sheriff is not allowed to demand or receive fees or other compensation for any service further than is expressly provided by law. If any officer demands or receives any other or higher fees than are prescribed by law, such officer is liable to the party aggrieved in the penalty of fifty dollars (\$50.00), to be recovered before any judge of the court of general sessions, and the officer also commits a Class C misdemeanor. T.C.A. § 8-21-103.

In the Court of Appeals of Tennessee *Edwin Graybeal, Jr., Sheriff, Washington County, Et Al. v. Tennessee Department of Human Services*, No. M2007-02320-COA-R3-CV, local officials appealed to the Chancery Court the decision by the Secretary of State that the Department of Human Services has a statutory priority under Tenn. Code Ann. § 71-4-501 et seq. to operate the inmate commissary at the local detention facility with blind vendors. The Chancery Court's findings were affirmed that the inmate commissary is subject to the statutory priority.

Inmate Funds Accounting/Blind Vendors

Reference Number: CTAS-2126

In Tennessee, the sheriff is responsible for the jail and for the inmates in the custody of the jail in the sheriff's county. Tenn. Code Ann. § 8-8-201(3). However, no Tennessee statute addresses whether funds in commissary accounts of inmates in county custody would be considered "public funds." The most analogous statutory provision is Tenn. Code Ann. § 41-21-216, which permits the warden of a state correctional institution to take charge of any personal property in an inmate's possession upon entering prison and to receive, hold, and account for money due or belonging to the inmate while incarcerated.

The term "public funds" is not defined in Tennessee statute. American Jurisprudence defines "public funds" as "moneys belonging to the United States or a corporate agency of the Federal Government, a state or subdivision thereof, or a municipal corporation; . . . moneys raised by the operation of law for the support of the government or for the discharge of its obligations." 63C Am. Jur. 2d Public Funds § 1. This office has previously opined that the administrative expenses appropriated by a county or counties for a county

or regional housing authority are "public funds." Op. Tenn. Att'y Gen. No. 89-102, 1989 WL 434599 (Tenn. A.G.). Conversely, this office has opined that funds held by a Clerk and Master for the benefit of a life tenant and ultimately for the benefit of remaindermen, which are not collected for governmental or public purposes, but are held by the Clerk and Master in the performance of his lawful duties for the benefit of private parties, are private funds rather than public funds. Op. Tenn. Att'y Gen. No. 77-249, 1977 WL 28373 (Tenn. A.G.).

Based on the foregoing, it is the opinion of this office that inmate funds in the inmate's commissary account or other account established by or for the benefit of the inmate while incarcerated and used to pay for commissary items such as snacks, clothing items, toiletries, etc.; to pay for medical copays as provided in Tenn. Code Ann. § 41-4-115; to pay child support; or to pay for law enforcement to escort the inmate to family member funerals or hospital visits as provided in Tenn. Code Ann. § 41-4-142, and which are not collected for governmental or public purposes, are private funds held by the sheriff in the performance of his lawful duties for the benefit of the inmates.

"All county officials and agencies receiving and disbursing the revenues of the state or any political subdivision thereof" are required to adopt the bookkeeping and accounting standards prescribed by the Comptroller. Tenn. Code Ann. §§ 5-8-501 and 5-8-502. The department of audit is required to annually audit all county records, including any trust funds held by any county official. Tenn. Code Ann. § 4-3-304(4). It is, therefore, the opinion of this office that the inmate funds are required to be handled by the sheriff consistent with the standards established by the State Comptroller's County Audit Division.

This office has previously addressed the question of whether a county can require, as a bid specification, that a blind vendor have the capability to manage its jail or correctional facility's inmate trust fund accounting system. Op. Tenn. Att'y Gen. No. 01-128, 2001 WL 964181 (Tenn. A.G.). As set forth in that opinion, the statute and rules which govern the blind vendors program do not require a blind vendor to have this capability. Therefore, it was and remains the opinion of this office that TBE has the discretion but may not be required to provide a blind vendor capable of handling inmate funds in order to exercise its statutory priority.

DHS' statutory priority under Tenn. Code Ann. § 71-4-501 *et seq.* gives DHS "the exclusive right to the operation of any and all vending facilities on any public property" that DHS determines are capable of being operated by a blind vendor. Tenn. Code Ann. § 71-4-502(3). This priority is to be liberally construed. Tenn. Code Ann. § 71-4-501. As previously discussed, DHS' exercise of its statutory priority may not be conditioned on the blind vendor's handling of inmate funds. Therefore, should DHS decide not to require that the blind vendor handle inmate funds, that decision will not affect DHS' statutory priority to operate the vending or commissary facilities at the jail.

As previously stated, the statute and rules which govern the blind vendors program do not require a blind vendor to conduct services, other than vending/commissary services, as part of the operation of the commissary. Therefore, a sheriff or some other administrative official may not by-pass DHS' statutory priority to operate a vending facility by requiring services, other than vending/commissary services, as part of the operation of the commissary.

Tenn. Code Ann. § 71-4-502(5) defines the term "vending facility" as follows:

"Vending facility" means a location or structure or space that may sell foods, beverages, confections, newspapers, periodicals, tobacco products, and other articles and services that are dispensed automatically by a machine or manually by sales personnel or attendants and that may be prepared on or off premises in accordance with applicable health laws. A "vending facility" may consist, exclusively or in appropriate combination as determined by the department, of automatic vending machines, cafeterias, snack bars, catering services, food concession vehicles, cart services, shelters, counters, and any appropriate equipment necessary for the sale of articles or services described in this subdivision (5). A "vending facility" may encompass more than one (1) building on a public property.

Based on this definition, DHS' discretion to exercise its right to operate the vending facility/commissary/vending machines on public property includes the discretion to determine the services that it will, or will not, perform while still retaining the statutory priority to other vending facility services under Tenn. Code Ann. §§ 71-4-502(5) and 503. Tenn. Atty. Gen. 06-156 (October 9, 2006).

Applicability of the Blind Vendors Program

Reference Number: CTAS-2127

As provided in Tenn. Code Ann. §71-4-502, the Department of Human Services has a right of priority to establish a vending facility to be operated by a blind individual on any public property. This statute

provides, in pertinent part:

This priority means that when the department has surveyed a public property and determined that such property is suitable for the location of a vending facility, it shall have the right of first refusal and the exclusive right to the operation of any and all vending facilities on any public property that it determines are capable of being operated by a blind individual[.]

Tenn. Code Ann. §71-4-502(3).

The department is required to be notified whenever any new buildings or other facilities are to be constructed by the State or on any other public property. Tenn. Code Ann. §71-4-503(a). In addition, the department shall also be notified when any existing contracts expire or are changed in any way. *Id.* At that time, the department shall promptly investigate and survey such property to determine if the location is suitable for one or more vending facilities. *Id.* If the department determines that such property is suitable for the location of a vending facility, its priority is established and may be exercised.

The term "priority" is defined in Tenn. Code Ann. §71-4-502(3) to apply to the operation of "any and all vending facilities" on any public property. There is no distinction between vending services operated by a County Sheriff's Office internally or through outside sources. Accordingly, the department's right of first refusal applies whether or not such services are offered by the County Sheriff's Office to outside sources for bid.

As noted above, the department's priority is not limited to situations where vending services are offered to outside sources for bid. A "vending facility" is defined in Tenn. Code Ann. §71-4-502(5) as a location or structure or space that sells "foods, beverages, confections, newspapers, periodicals, tobacco products, and other articles and services that are dispensed automatically by a machine or manually by sales personnel or attendants." A "vending facility" may consist of vending machines, cafeterias, snack bars, catering services, food concession vehicles, cart services, shelters, or counters. Tenn. Code Ann. §71-4-502(5). The operation of a commissary by a County Sheriff's Office would fall within the definition of a "vending facility" for purposes of the Blind Vendors Program. Accordingly, unless there is a pre-existing contract for a commissary or the department determines that the public property is not suitable for a vending facility, the County Sheriff's Office may not operate a commissary on such public property whether internally or through outside sources.

As long as a vending facility, as defined by Tenn. Code Ann. §71-4-502(5), is operated on public property either through contract or directly by the County Sheriff's Office, the provisions of the Blind Vendors Program shall apply. See Tenn. Op. Atty. Gen. No. 06-037 (Feb. 21, 2006). Thus, a Sheriff's Department will be considered to be operating vending facilities on public property even if this is accomplished through a third party contract.

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