July 31, 2000

OPINION NO. 2000-031

The Honorable Russell V. Leffler
Huron County Prosecuting Attorney
12 E. Main Street
Norwalk, Ohio 44857

Dear Prosecutor Leffler:

We have received your request for an opinion concerning the proper use of money held in a county jail commissary fund. Your question is whether the county sheriff is permitted to spend money from the county jail commissary fund to purchase hand-held radios for the use of the corrections officers.

You have described a situation in which county jail inmates are outside on the grounds of the jail on a regular basis, engaging in various tasks under the supervision and direction of corrections officers. The jail's surveillance and security systems do not monitor the exterior grounds with the same scope and precision as the interior of the facility. Accordingly, the sheriff has concerns regarding immediate response to an emergency arising while inmates are on the facility grounds and is considering equipping the supervising corrections officers with hand-held radios. The radios would be used only by corrections officers supervising inmates outside the jail facility and would be used to call for assistance in the event of an emergency.

In order to address your question, we must look at the statute governing the operation of the commissary and the expenditure of commissary funds. Pursuant to R.C. 341.25, a sheriff may establish a commissary from which anyone incarcerated in the jail may make purchases. The commissary is required to provide for the distribution of hygiene articles and writing materials to indigent inmates. R.C. 341.25(A).

The statute provides for the creation of a commissary fund and requires that the management of that fund be strictly controlled in accordance with procedures adopted by the Auditor of State. R.C. 341.25(B). Commissary fund revenues in excess of operating costs and reserve are considered profits. With respect to the expenditure of those revenues, the statute states: "All profits from the commissary fund shall be used to purchase supplies and equipment, and to provide life skills training and education or treatment services, or both, for the benefit of persons incarcerated in the jail." *Id*.

The statute provides further that the sheriff "shall adopt rules for the operation of any commissary fund the sheriff establishes." *Id*. We are informed, however, that in the instant case no such rules have been adopted.

It is clear from the language of the statute that commissary fund profits may be used only to purchase supplies and equipment for the benefit of persons incarcerated in the jail or to provide life skills training and education or treatment services, or both, for the benefit of persons incarcerated in the jail. Whether a particular expenditure serves one of the designated statutory purposes involves determinations of fact, and the sheriff is authorized to make those determinations. R.C. 341.25(B); *see generally* 1989 Op. Att'y Gen. No. 89-078 (modified in part on the basis of statutory amendment by 1998 Op. Att'y Gen. No. 98-023). We cannot exercise on behalf of the sheriff discretion that has been delegated to the sheriff, but we can discuss relevant factors to be considered in the exercise of that discretion. *See, e.g.*, 1998 Op. Att'y Gen. No. 98-023; 1990 Op. Att'y Gen. No. 90-094; 1989 Op. Att'y Gen. No. 89-090.

The intention of a statute is determined from the language the General Assembly enacted and the apparent purpose to be served. *See, e.g.*, *Cochrel v. Robinson*, 113 Ohio St. 526, 527, 149 N.E. 871, 872 (1925) (syllabus, paragraph 4). The commissary fund statute sets forth a clear requirement that the profits must be used only for supplies, equipment, training and education, or treatment services "for the benefit of persons incarcerated in the jail." R.C. 341.25(B). Thus, the basic test to be met is that a particular expenditure has as its purpose the benefit of jail inmates. *See generally State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916) (with respect to expenditures by public bodies, "[t]he authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise"); 1989 Op. Att'y Gen. No. 89-078 (modified in part on the basis of statutory amendment by 1998 Op. Att'y Gen. No. 98-023).

In some sense, any expenditure made for any aspect of the operation or management of the jail is for the benefit of inmates, because it is to the benefit of inmates that the jail be properly managed, competently staffed, and adequately equipped. However, it would not be a reasonable reading of the statute to allow profits from the commissary fund to be used simply for the general operation of the jail. Responsibility for providing, funding, staffing, and operating a jail facility that meets minimum standards has been delegated to the sheriff and the board of county commissioners, and that responsibility exists apart from any moneys in the commissary fund. *See* R.C. 307.01(A); R.C. 311.20; R.C. 325.071; R.C. 341.01 (sheriff shall "keep … persons [confined in the county jail] safely, attend to the jail, and govern and regulate the jail"); R.C. 341.05. Moneys provided to the sheriff for the funding of jail operations should be expended for that purpose.

Rather than providing for general jail operations, commissary fund profits are directed to uses that benefit the persons incarcerated in the jail. It is appropriate to use those profits to benefit the inmates, because the profits are derived from amounts that the inmates have spent for purchases from the commissary.

The fact that equipment is held and operated solely by corrections officers does not in itself render the equipment ineligible for funding from the commissary fund. The nature of a jail operation requires that some supplies, equipment, and training or treatment materials be handled by the staff for the benefit of the inmates. However, if equipment is held and operated by the staff, it is necessary to examine its usage carefully to make certain that the equipment is purchased for the benefit of the inmates, rather than for the convenience of the staff. *See generally* 15 Ohio Admin. Code 5120-5-04 (with respect to profits from commissary fund created and maintained for the benefit of inmates at a state facility, which profits are paid into the industrial and entertainment fund pursuant to R.C. 5120.131(B) to be used only for the entertainment and welfare of inmates, division (C) limits disbursements to "purchases which exclusively benefit the inmates. No disbursement will be approved for items to be used for the sole benefit of employees"; permitted purchases include recreation and entertainment equipment and supplies and their repair and maintenance; Christmas presents; books, magazines, newspapers, and other library supplies; films and film rentals; miscellaneous chapel expenses; and occupational or activity therapy supplies and expenses); *see also* R.C. 5120.131; 15 Ohio Admin. Code 5120-5-05.

In construing statutory provisions governing commissary fund proceeds of state facilities, it has been concluded that there is discretion to determine which expenses are permissible, provided that "any determination as to whether an expenditure is for the entertainment and welfare of the inmates must be reasonable and within the limitations set by statute." 1990 Op. Att'y Gen. No. 90-094, at 2-401. A similar standard applies in the instant case. The sheriff has discretion to determine whether expenditures are proper, provided that the exercise of discretion is based on a reasonable determination that the expenditures further a statutory purpose. *See generally* 1998 Op. Att'y Gen. No. 98-023; 1989 Op. Att'y Gen. No. 89-090.

In determining whether hand-held radios used by corrections officers further a statutory purpose, the sheriff must consider whether the radios are supplies and equipment for the benefit of persons incarcerated in the jail, or whether the radios are used to provide life skills training and education or treatment services for the benefit of persons incarcerated in the jail. Only if the sheriff reasonably finds that the radios serve a statutory purpose may they be purchased with commissary fund revenues.

Therefore, it is my opinion and you are advised, that pursuant to R.C. 341.25(B), a county sheriff may spend profits from the county jail commissary fund to purchase hand-held radios to be used by corrections officers when supervising inmates outside the jail facility only if the sheriff reasonably determines that such radios are supplies and equipment for the benefit of persons incarcerated in the jail, or are used to provide life skills training and education or treatment services for the benefit of persons incarcerated in the jail.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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SYLLABUS: 2000-031

Pursuant to R.C. 341.25(B), a county sheriff may spend profits from the county jail commissary fund to purchase hand-held radios to be used by corrections officers when supervising inmates outside the jail facility only if the sheriff reasonably determines that such radios are supplies and equipment for the benefit of persons incarcerated in the jail, or are used to provide life skills training and education or treatment services for the benefit of persons incarcerated in the jail.