Inmate Welfare Fund

Number: INFORMAL

Date: July 30, 2013

Mr. Frank A. Baker, P.A.
4431 Lafayette Street
Mariana, Florida 32446

Dear Mr. Baker:

As counsel to the Board of County Commissioners of Jackson County, Florida, you have asked for this office's assistance in determining what may be appropriate expenditures for the Inmate Welfare Fund established in section 951.23(9), Florida Statutes. We have researched the issue and have nothing to add to the research and analysis presented in your letter. However, I offer the following informal comments and citations to previously issued Attorney General Opinions in an effort to provide you with some direction.

Section 951.23, Florida Statutes, dealing with county and municipal detention facilities makes provision for an inmate commissary and welfare fund. The statute authorizes the operation of a commissary in a detention facility and requires that, if a commissary is established, an inmate welfare fund must also be established.[1] The officer in charge of the detention facility is charged with establishing a procedure for providing commissary or canteen facilities or access to canteen items for the inmates' benefit.[2] Commissary profits may be used to pay expenses involved in its operation.[3]

Subsection (9) also provides general direction regarding the use of profits from the commissary:

"(d) Profits from the commissary shall be used for overall inmate welfare, and an inmate welfare fund committee shall recommend what expenditures are to be made. Activities of the committee shall be reviewed by the officer in charge who shall have final authority on expenditures. It is recommended that the jail chaplain be a member of the committee."

Thus, it is the officer in charge who has overall authority for approving expenditures from the inmate commissary and welfare fund and it is this officer who is responsible for an annual audit of the fiscal management of the commissary by a disinterested party. The provisions about which you inquire, subsection (9) of section 951.23, Florida Statutes, require only that funds from the inmate welfare fund "shall be used for overall inmate welfare" without more specificity.

The language of subsection (9) came into the statutes in 1996 as a provision of Chapter 96-312, Laws of Florida. Legislative history relating to the CS/HB 1411, which became Chapter 96-312, suggests that the act "codifies an administrative rule providing for the operation of commissaries in detention facilities, establishes an inmate welfare fund for such purpose and provides guidelines for operating the commissaries."[4] The administrative rule referenced in this legislative history was Rule 33-8.10, Florida Administrative Code, which was adopted by the Department of Corrections. That rule provided that "[p]rofits in excess of expenses should be

used for prisoner welfare, such as recreation, table games, and television."[5] The broader purpose of the codification of this rule in the Florida Statutes appears to be the transfer to local authorities, rather than to the Department of Corrections, of the duty and responsibility of making and enforcing rules and regulations governing the treatment of county prisoners.[6]

In Attorney General Opinion 79-44, this office considered whether funds in the inmate welfare fund would be "public funds" subject to statutory provisions for general treatment of deposits, fees, or commissions received by the county or the sheriff. In light of the administrative rule controlling disposition of inmate welfare funds at that time, which became section 951.23(9), Florida Statutes, this office concluded that "[f]unds generated by the operation of an inmate commissary or canteen facility by the sheriff's office in the county jail are not 'public money' as that term is defined in Ch. 219 and should be disbursed according to the terms of Rule 33-8.10, F.A.C. These funds are not subject to the requirements of ss. 30.51[7] and 145.121.[8]" The sheriff, and in Jackson County the county jail administrator, is merely the administrator of the inmate welfare trust as these funds have not been converted to his or her use or disposition.

While this office cannot provide you with a comprehensive description of the limitations on the uses of monies in the inmate welfare fund set forth in section 951.23(9), Florida Statutes, I trust that these informal comments will be helpful to you in advising the Board of County Commissioners of Jackson County.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

---

[1] Section 951.23(9)(a), Fla. Stat.

[2] *Id.*

[3] Section 951.23(9)(c), Fla. Stat., provides that expenses paid from commissary operations may include compensation for commissary employees and gratuities for inmates assisting in the operation of the commissary.

[4] *See* s. 31, "Section-By-Section Analysis," House of Representatives Committee on Corrections Final Bill Analysis & Economic Impact Statement on CS/HB 1411, dated June 3, 1966.

[5] Rule 33-8.10, F.A.C., provided:

"(1) A detention facility commissary may be operated if it is properly controlled. The commissary should not sell food that competes with the detention facility food program. It is preferable that prisoners routinely carry no money; if money is permitted, a limit should be set, and all money in possession in excess of that limit should be confiscated. The Officer-in-Charge must approve all

items to be sold and set the prices and special conditions governing such sales. Valuable items should be added to the prisoner's personal property list after purchase.
(2) A list of items for sale and prices should be easily accessible to prisoners.
(3) Pries should be set at a profit rate not to exceed 15%.
(4) Any expenses involved in the commissary operation, including compensation for commissary employees and gratuities for prisoners who may assist such employees, may be paid from the profits.
(5) Profits in excess of expenses should be used for prisoner welfare, such as recreation, table games, and television."

See Op. Att'y Gen. Fla. 79-44 (1979), quoting the rule in concluding that "[f]unds generated by operation of an inmate commissary or canteen facility by the sheriff's office in the county jail are not 'public funds' and should be disbursed according to a rule prescribing such use as prisoner welfare or recreation."

[6] *See* "Summary," House of Representatives Committee on Corrections Bill Analysis & Economic Impact Statement on PCS/HB 1411, dated March 18, 1996.

[7] The opinion notes that the purpose of section 30.51, Fla. Stat., is to "prescribe the disposition of fees, commissions, remuneration, or other funds which the sheriff is authorized by law to receive from other parties and governmental agencies doing business with the sheriff's office, in return for services rendered or performed by his office."

[8] Section 145.121, Fla. Stat., provides that except for the statutory salary receivable by county officials "all fees, costs, salaries, commissions, extra compensation, or any other funds which are paid or payable to a county official" shall be included as income of the office.