S T A T E   O F   T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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October 9, 2006

Opinion No. 06-156

Inmate Funds Accounting/Blind Vendors

QUESTIONS

1. Are inmate funds in an inmate's commissary account, or any other account or fund, established by or for the benefit of the inmate while incarcerated and used to pay, for example, 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 "public funds" within the meaning of Tenn. Code Ann. § 5-8-207?

2. If inmate funds under question #1 are "public funds" within the context of Tenn. Code Ann. § 5-8-207, can the sheriff delegate or contract the handling of this function to the commissary vendor, whether the vendor is a private entity or the Department of Human Services' Tennessee Business Enterprises ("DHS-TBE") program?

3. If inmate funds are not public funds within the context of Tenn. Code Ann. § 5-8-207, are those funds still required to be handled by the sheriff under the recommended procedures the State Comptroller's County Audit Division prescribes that are to be followed for contracted commissary/inmate fund operations as described above?

4. Can a county jail or correctional center have a requirement that the commissary vendor also handle all of the inmate funds in the manner described above, as a condition for Tennessee Business Enterprises to exercise its statutory priority on public property for the operation of an inmate commissary?

5. If Tenn. Code Ann. § 5-8-207 applies to inmate funds, and the inmate funds are required to be handled by the sheriff under the procedures the State Comptroller's County Audit Division prescribes for contracted commissary/inmate fund operations, can DHS' refusal to operate the commissary in the manner requested by the Sheriff, because of the application of that law to inmate funds, allow the County to defeat the DHS-TBE statutory priority of Tenn. Code Ann. § 71-4-501 *et seq.* to operate vending/commissary facilities at the jail and, thereby, deny DHS-TBE's operation of the commissary?

6. Can a county's public property management, whether the sheriff or some other administrative official, effectively by-pass the DHS-TBE's statutory priority right to operate a vending facility by requiring the DHS-TBE to conduct services, other than vending/commissary services, as part of the operation of the commissary?

7. Does the DHS-TBE's discretion to exercise its right to operate the vending facility/commissary/vending machines on public property also include the discretion to determine the services that it will, or will not, perform and still retain the statutory priority to other vending facility services under Tenn. Code Ann. §§ 71-4-502(5) and 503?

OPINIONS

1. No. 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 not collected for governmental or public purposes are private funds rather than public funds.

2. Inasmuch as this office has concluded that the inmate funds are private funds rather than "public funds," no response to this question is necessary.

3. Yes. The inmate funds are required to be handled by the sheriff consistent with the standards established by the Comptroller.

4. No. 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.

5. No. 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.

6. No. A county's public property management 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.

7. Yes. The statutory definition of the term "vending facility" gives DHS 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.

ANALYSIS

1. 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.

2. Inasmuch as this office has concluded that the inmate funds are private funds rather than "public funds," no response to this question is necessary.

3. "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.

4. 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.

5. 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.

6. 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.

7. 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.

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