

September 5, 2008

The Honorable Amanda K. Spies  
Tuscarawas County Prosecuting Attorney  
125 E. High Avenue  
New Philadelphia, Ohio 44663

SYLLABUS:

2008-031

Profits from the commissary fund under R.C. 341.25 may not be used to purchase prescription medications for persons incarcerated in the jail.



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OPINION NO. 2008-031

The Honorable Amanda K. Spies  
Tuscarawas County Prosecuting Attorney  
125 E. High Avenue  
New Philadelphia, Ohio 44663

Dear Prosecutor Spies:

We have received your request for an opinion concerning the use of profits from the sheriff's commissary fund under R.C. 341.25. The statute permits the use of commissary fund profits to purchase supplies and equipment for the benefit of persons incarcerated in the jail, and you have asked whether prescription medications are deemed to be supplies that are permitted to be purchased for inmates under the statute.

For the reasons discussed below, we conclude that profits from the commissary fund under R.C. 341.25 may not be used to purchase prescription medications for persons incarcerated in the jail.

#### **Operation of Sheriff's Commissary Fund**

R.C. 341.25 authorizes the county sheriff to establish a commissary for the jail. If a commissary is established, all persons incarcerated in the jail may make purchases, and the commissary must distribute necessary hygiene articles and writing materials to indigent inmates. R.C. 341.25(A).

The commissary is financed through a commissary fund that is subject to procedures adopted by the Auditor of State and rules adopted by the sheriff. R.C. 341.25(B).<sup>1</sup> Commissary fund revenues over and above operating costs and reserve are considered profits. *Id.* Profits from the commissary fund may be expended only for the purposes specified by statute. *See* 2004 Op. Att’y Gen. No. 2004-006, at 2-55; 2000 Op. Att’y Gen. No. 2000-031. Those purposes are set forth as follows: “*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, and to pay salary and benefits for employees of the sheriff who work in or are employed for the purpose of providing service to the commissary.*” R.C. 341.25(B) (emphasis added).

Thus, under R.C. 341.25(B), profits from the commissary fund may be used: (1) to purchase supplies and equipment for the benefit of persons incarcerated in the jail; (2) to provide life skills training and education or treatment services, or both, for the benefit of persons incarcerated in the jail; or (3) to pay salary and benefits for employees of the sheriff who work in or are employed for the purpose of providing service to the commissary. *See* 2004 Op. Att’y Gen. No. 2004-006, at 2-56 to 2-57 (describing statutory history indicating that the purchase of supplies and equipment is restricted to items “for the benefit of persons incarcerated in the jail”). Of the permissible expenditures, the only category that might include the purchase of prescription medications is the first—the purchase of supplies for the benefit of persons incarcerated in the jail.

The nature of expenditures that may properly be made from commissary fund profits under R.C. 341.25 has been addressed in formal opinions of former Attorneys General. *See* 2004 Op. Att’y Gen. No. 2004-006;<sup>2</sup> 2000 Op. Att’y Gen. No. 2000-031;<sup>3</sup> *see also* 1990 Op. Att’y

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<sup>1</sup> A representative of your office has informed us in the instant case that there are no existing rules addressing the matter at issue.

<sup>2</sup> 2004 Op. Att’y Gen. No. 2004-006 states in the syllabus:

1. R.C. 341.25(B) permits the Mahoning County Sheriff’s Department to expend profits from the commissary fund to pay a nonprofit agency to provide life skills training and education or treatment services for the benefit of inmates at the Mahoning County Justice Center.
2. R.C. 341.25(B) permits the Mahoning County Sheriff’s Department to expend profits from the commissary fund to pay for the repair or purchase of refrigerators, washers and dryers, stoves, dishwashers, and related items only if the refrigerators, washers and dryers, stoves, dishwashers, or related items are provided for the benefit of persons incarcerated in the jail, or are provided for use in life skills training and education or treatment services for the benefit of persons incarcerated in the jail, and

Gen. No. 90-094. The analysis has been guided by the principle that the intention of a statute is determined from the language enacted by the General Assembly and the apparent purpose to be served, and by the principle that the authority to act in financial transactions must be clear and distinctly granted. 2000 Op. Att’y Gen. No. 2000-031, at 2-194 (citations omitted); *see also* 2004 Op. Att’y Gen. No. 2004-006, at 2-57. It has been established that the sheriff has discretion to make a determination as to whether a particular expenditure is for the benefit of persons incarcerated in the jail, provided that the determination is reasonable and within the limitations set by statute. *See* 2004 Op. Att’y Gen. No. 2004-006; 2000 Op. Att’y Gen. No. 2000-031, at 2-195; *see also* 1990 Op. Att’y Gen. No. 90-094, at 2-401 (funds of institutions under the jurisdiction of the Department of Rehabilitation and Correction).

As discussed in these earlier opinions, the language and application of R.C. 341.25 indicate that the mandate to spend commissary profits for the benefit of persons incarcerated in the jail reflects the intent to benefit the inmate community. The concept is that, because the profits are derived from amounts spent by the inmates in making purchases from the commissary, the profits should be expended for purposes that benefit the inmates. *See* 2004 Op. Att’y Gen. No. 2004-006, at 2-58 (“commissary fund profits may be expended for supplies, equipment, training, education, or treatment only if the items or services procured are for the benefit of the inmates, whose purchases are the source of the commissary fund profits”); *accord* 2000 Op. Att’y Gen. No. 2000-031, at 2-194; *see also* 1990 Op. Att’y Gen. No. 90-094.<sup>4</sup>

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are not provided for purposes of the general operation of the Mahoning County Justice Center.

<sup>3</sup> 2000 Op. Att’y Gen. No. 2000-031 states in the syllabus:

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.

<sup>4</sup> Similar commissary arrangements exist in institutions under the jurisdiction of the Ohio Department of Rehabilitation and Correction. Profits from those commissary operations “shall be paid into the industrial and entertainment fund and used only for the entertainment and welfare of inmates.” R.C. 5120.131; *see also* 15 Ohio Admin. Code 5120-5-04(A), -05(F). Disbursements from the industrial and entertainment fund may be made only for purchases that exclusively benefit inmates, including recreation equipment, library supplies and equipment, chapel expenses, occupational and/or activity therapy supplies, going-home clothes, inmate free postage, and hygiene and legal kits. 15 Ohio Admin. Code 5120-5-04(C). No disbursements will be approved for legal books required by department policy, which must be purchased

Further, it has been established that profits from the commissary fund may not be expended to meet statutory duties pertaining to the operation of the jail and the care of the inmates. Rather, these profits are intended to be used for purposes that enrich the lives of the inmates in a manner that exceeds basic jail operations. *See* 2004 Op. Att’y Gen. No. 2004-006, at 2-58 (the purchase or repair of an appliance “may be considered to be for the benefit of persons incarcerated in the jail only if it benefits the inmates in a manner that exceeds the basic operational needs of the jail”); *see also* R.C. 341.01 (the sheriff shall “govern and regulate the jail according to the minimum standards for jails in Ohio promulgated by the department of rehabilitation and correction”).

As was stated in 2000 Op. Att’y Gen. No. 2000-031, at 2-194:

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. (Emphasis added.)

To provide a benefit to inmates as intended by R.C. 341.25(B), commissary fund profits must be used to provide resources in addition to those available under the legally-mandated standard of jail operations.

### **Application of Commissary Fund Provisions to Prescription Medications**

In light of the established interpretation and application of the commissary provisions discussed above, it does not appear that prescription medications may be deemed to be “supplies . . . for the benefit of persons incarcerated in the jail” that may be purchased with commissary fund profits under R.C. 341.25. The county sheriff is given statutory responsibility for providing

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through general revenue funds, or for items to be used for the benefit of an individual inmate, inmate group, or employees. *Id.*; *see* 2004 Op. Att’y Gen. No. 2004-006, at 2-58 n.2; 1990 Op. Att’y Gen. No. 90-094 (syllabus) (“[t]he monies in an industrial and entertainment fund, created and maintained pursuant to R.C. 5120.131, may be expended only for purchases which are reasonably determined to be for the entertainment and welfare of the inmates of the institution from whence the fund originated”).

health care to jail inmates, and this responsibility includes the duty of providing necessary prescription medications.<sup>5</sup> See R.C. 311.20 (the sheriff submits to the board of county commissioners a budget estimating the cost of operating the jail and feeding the inmates for the following year and also submits monthly accounts of the actual costs of keeping and feeding prisoners); R.C. 341.01 (“[t]he sheriff shall have charge of the county jail and all persons confined therein” and “shall keep such persons safely”); R.C. 341.20 (the board of county commissioners, with the consent of the sheriff, may contract with commercial providers for medical services necessary for the care and welfare of prisoners); 1995 Op. Att’y Gen. No. 95-028, at 2-142 (“it is clearly established that the sheriff has a duty to provide necessary medical care to persons confined in the county jail”); 1989 Op. Att’y Gen. No. 89-017 (syllabus, paragraph 1) (“[t]he cost of medical treatment of a prisoner is the responsibility of the law enforcement agency in physical control of the prisoner”); 1985 Op. Att’y Gen. No. 85-054 (if a person confined in the county jail is in need of medical care, the county sheriff must provide that care at county expense); see also *State v. Goins*, Montgomery County App. No. 21077, 2006-Ohio-989, 2006 Ohio App. LEXIS 933, at ¶13 (Mar. 3, 2006); *Cuyahoga County Hosp. v. City of Cleveland*, 15 Ohio App. 3d 70, 71, 472 N.E.2d 757 (Cuyahoga County 1984); *University Hosps. of Cleveland v. City of Cleveland*, 28 Ohio Misc. 134, 138, 276 N.E.2d 273 (C.P. Cuyahoga County 1971).<sup>6</sup>

As discussed in 2000 Op. Att’y Gen. No. 2000-031, commissary fund profits cannot properly be spent to fulfill the basic duty of operating a jail that meets statutory standards. Because commissary profits are intended to be used for supplemental benefits, rather than to fulfill statutory duties, they may not be used to purchase necessary prescription drugs for inmates.<sup>7</sup>

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<sup>5</sup> It is, of course, evident that any arrangement for providing prescription drugs to jail inmates must comply with relevant provisions of law. See, e.g., R.C. Chapters 3719 and 4729; 2001 Op. Att’y Gen. No. 2001-041.

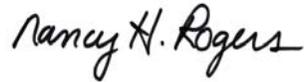
<sup>6</sup> Reimbursement from various sources may be sought in appropriate circumstances. See, e.g., 2004 Op. Att’y Gen. No. 2004-024, at 2-207 n.5; 1995 Op. Att’y Gen. No. 95-028, at 2-143; 1985 Op. Att’y Gen. No. 85-054, at 2-203; see also *Cuyahoga County Hosp. v. City of Cleveland*, 15 Ohio App. 3d 70, 472 N.E.2d 757 (Cuyahoga County 1984); *University Hosps. of Cleveland v. City of Cleveland*, 28 Ohio Misc. 134, 276 N.E.2d 273 (C.P. Cuyahoga County 1971).

<sup>7</sup> Further, it is not clear if a prescription medication may be considered a “supply” for purposes of R.C. 341.25, because a prescription medication must be prescribed for a particular patient by a licensed health professional as part of that patient’s medical care. See R.C. 4729.01(H). In this respect, prescription medications are distinguishable from the incidental or supplemental items, generally available to anyone within the inmate community, for which commissary profits are commonly used.

**Conclusion**

For the reasons discussed above, it is my opinion, and you are advised, that profits from the commissary fund under R.C. 341.25 may not be used to purchase prescription medications for persons incarcerated in the jail.

Respectfully,

A handwritten signature in black ink that reads "Nancy H. Rogers". The signature is written in a cursive style with a prominent initial "N".

NANCY H. ROGERS  
Attorney General