

OPINION NO. 2004-006**Syllabus:**

1. R.C. 341.25(B) permits the Mahoning County Sheriff's Department to expend profits from the commissary fund to pay a non-profit 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 are not provided for purposes of the general operation of the Mahoning County Justice Center.

To: Paul J. Gains, Mahoning County Prosecuting Attorney, Youngstown, Ohio
By: Jim Petro, Attorney General, February 13, 2004

We have received your request for an opinion concerning the expenditure of profits from a county jail commissary fund. You have asked the following questions:

1. May the Mahoning County Sheriff's Department utilize profits from the commissary fund to pay a nonprofit agency that provides life skills training and education or treatment services to inmates at the Mahoning County Justice Center?

2. May the Mahoning County Sheriff's Department utilize profits from the commissary fund to pay for the repairs and/or purchase of refrigerators, washers and dryers, stoves, dishwashers, and any other related items that are located within the Mahoning County Justice Center? Your representative has informed us that the Mahoning County Justice Center contains the county jail facilities.

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County jail commissary fund

Pursuant to R.C. 341.25, the sheriff may establish a commissary for the county jail. If a commissary is established, "all persons incarcerated in the jail shall receive commissary privileges." R.C. 341.25(A). The commissary is required to provide "necessary hygiene articles and writing materials" to indigent inmates. *Id.* The sheriff must establish a commissary fund, and the management of moneys in the fund is strictly controlled in accordance with procedures adopted by the Auditor of State. R.C. 341.25(B).

Commissary fund revenue in excess of operating costs and reserve constitutes profits. The expenditure of profits is governed by the following statutory language:

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.

Id. Thus, profits from the commissary fund may be expended only for the purposes specified. *See* 2000 Op. Att'y Gen. No. 2000-031.

By statute, the sheriff is authorized to adopt rules for the operation of the commissary fund. R.C. 341.25(B). In the instant case, Directive #616.04 of the Mahoning County Sheriff's Office states, in part: "Profits from the commissary operation shall be utilized for the entertainment and welfare to benefit the inmate population." The directive goes on to establish a procedure for making purchases of items to benefit the inmate population.

Expenditure of profits from the commissary fund to pay a nonprofit agency to provide training and education or treatment services

Your first question asks whether profits from the commissary fund may be expended to pay a nonprofit agency that provides life skills training and education or treatment services to jail inmates. The statute plainly authorizes the expenditure of commissary fund profits "to provide life skills training and education or treatment services, or both, for the benefit of persons incarcerated in the jail." R.C. 341.25(B). Thus, the training, education, and treatment services to which this question relates are the types of benefits that commissary fund profits are intended to provide. Your question is whether these benefits may be purchased from a nonprofit agency.

R.C. 341.25(B) permits commissary fund profits to be used to "purchase" supplies and equipment, and to "provide" life skills training and education or treatment services. It does not expressly address the question whether the sheriff and jail staff must provide the

training, education, and treatment services directly or whether they may provide training, education, and treatment services by paying a nonprofit agency to supply them.

The word "provide" is commonly understood to include both the direct rendering of services and the procurement of services by purchasing them from an outside source. As one court stated, with regard to a statute authorizing a county board of mental retardation to "provide" transportation:

This transportation might be supplied by the individual members, or it might be operated with motor vehicles belonging to the board of mental retardation, or on the other hand, it might be provided by third parties with whom the board of mental retardation could certainly contract ... for purposes of "providing" the transportation required.

CB Transp., Inc. v. Butler County Bd. of Mental Retardation, 60 Ohio Misc. 71, 79, 397 N.E.2d 781 (C.P. Butler County 1979); *see also, e.g.*, 1980 Op. Att'y Gen. No. 80-089, at 2-347; 1980 Op. Att'y Gen. No. 80-027, at 2-112 ("[t]he power of the Department to 'provide' for the custody, treatment, and training of persons elsewhere than within a hospital, of necessity includes the power to contract for the provision of these services").

Nothing in R.C. 341.25 suggests that life skills training and education or treatment services must be provided directly by the sheriff and the sheriff's staff, rather than being procured through payment to an appropriate provider. Therefore, the authority granted by R.C. 341.25(B) to "provide" life skills training and education or treatment services may reasonably be read as encompassing the authority to purchase life skills training and education or treatment services from a third-party provider. We conclude, accordingly, that 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.

Expenditures of profits from the commissary fund to pay for the repair or purchase of refrigerators, washers and dryers, stoves, dishwashers, and any other related items that are located within the Mahoning County Justice Center

Your second question asks whether profits from the commissary fund may be used to pay for the repair or purchase of refrigerators, washers and dryers, stoves, dishwashers, and any other related items that are located within the Mahoning County Justice Center. It is clear from R.C. 341.25 that the fact that particular items are located in the jail or are used in connection with the jail is not sufficient to authorize the expenditure of commissary fund profits for those items. Rather, the statute permits the expenditure of profits only for certain limited purposes, namely, "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).

The language of R.C. 341.25(B) is ambiguous, in that the phrasing does not indicate clearly whether the words "for the benefit of persons incarcerated in the jail" apply only to the provision of life skills training and education or treatment services or whether they apply also to the purchase of supplies and equipment. The history of the statute, however, elucidates the intent of the General Assembly. As initially enacted in 1996, R.C. 341.25(B) required all profits from the commissary fund to be used "to purchase supplies and equipment for the benefit of persons incarcerated in the jail." 1995-1996 Ohio Laws 5275, 5298, Part III (Sub. H.B. 480, eff. Oct. 16, 1996). This language was amended in 1997 by the

insertion of language authorizing the profits to be used also "to provide life skills training and education or treatment services, or both." 1997-1998 Ohio Laws 909, 1075, Part I (Am. Sub. H.B. 215, eff. June 30, 1997). The intent was to retain the authority to purchase supplies and equipment for the benefit of persons incarcerated in the jail and to add the authority to provide life skills training and education, or treatment services, or both, for the benefit of persons incarcerated in the jail. See 122-HB215 LSC Analysis (As Passed by the General Assembly), at 131 ("[u]nder prior law all profits from the commissary fund had to be used to purchase supplies and equipment for the benefit of persons incarcerated in the jail. The act provides that the profits may be used also to provide life skills training and education or treatment services, or both, for the benefit of the incarcerated persons"). Therefore, profits from the commissary fund may be used to purchase supplies and equipment only if those supplies and equipment are for the benefit of persons incarcerated in the jail. Although R.C. 341.25(B) does not expressly authorize expenditures for the repair of equipment, the authority to expend money for that purpose may be implied as necessary to render the equipment useful.

The standard for determining when supplies and equipment, or life skills training and education or treatment services, are for the benefit of persons incarcerated in the jail was discussed by a former Attorney General, as follows:

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.

2000 Op. Att'y Gen. No. 2000-031, at 2-194.¹ Thus, 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.²

In the instant case, the question is whether expenditures for the repair or purchase of various appliances are expenditures for the benefit of persons incarcerated in the jail. To the extent that the appliances are necessary for the general operation of the jail, their provision and repair are part of the obligation of the sheriff and the board of county commissioners to provide and operate a jail that meets minimum standards and houses its inmates safely. *See* R.C. 307.01(A); R.C. 311.20; R.C. 341.01. It is obvious that, for a jail to function properly, it must have adequate refrigerators to keep food at the proper temperature, stoves for the preparation of food, dishwashers as necessary to wash dishes in a sanitary manner, and washers and dryers to clean linens and clothing as required for the operation of the facility and the hygiene of the inmates.

The repair or purchase of an appliance of the type you have described 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. For example, a refrigerator that is available to inmates for the storage of personal items might be found to be for the benefit of persons incarcerated in the jail, and expenditures for the purchase or repair of such an item would consequently be authorized by R.C. 341.25(B).

It appears, further that the purchase or repair of appliances may be authorized by R.C. 341.25(B) if the appliances are provided for use in life skills training and education or treatment services for the benefit of persons incarcerated in the jail. *See* 2000 Op. Att'y Gen. No. 2000-031. The standard is that the appliance in question must be used to enhance the life skills training and education or treatment services, rather than simply providing equipment necessary for the operation of the jail.

¹When 2000 Op. Att'y Gen. No. 2000-031 was issued, R.C. 341.25(B) did not include language authorizing the expenditure of commissary fund profits 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. That language was inserted by Am. Sub. H.B. 95, 125th Gen. A. (2003) (act eff. June 26, 2003; amendment to R.C. 341.25 eff. Sept. 26, 2003).

²By way of comparison, state institutions under the jurisdiction of the Department of Rehabilitation and Correction are also authorized to establish commissary funds. Profits from commissary fund operations are paid into the industrial and entertainment fund and may be "used only for the entertainment and welfare of inmates." R.C. 5120.131. Under rules adopted by the Department, moneys in the industrial and entertainment fund "shall be used for purchases which exclusively benefit the inmates," and "[n]o disbursements will be approved for items to be used for the sole benefit of employees." 15 Ohio Admin. Code 5120-5-04(C)(1). Disbursements may be made for purposes including, but not limited to, the following: "recreation and entertainment equipment and supplies; repair and maintenance of such equipment purchased from these funds; Christmas presents; books, magazines, newspapers and other library supplies; films and film rentals, miscellaneous chapel expenses; occupational and/or activity therapy supplies and expenses." 15 Ohio Admin. Code 5120-5-04(C)(2); *see also* 1990 Op. Att'y Gen. No. 90-094.

The language of R.C. 341.25(B) permitting the expenditure of profits "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" is not by its terms restricted to expenditures that benefit inmates. Rather, it addresses the personnel expenditures relating to the operation of the commissary and permits commissary profits to be expended for these purposes. This language appears to authorize the use of profits only for salary and for fringe benefits that are part of compensation, such as health or life insurance, and not to authorize the purchase of appliances as a benefit for employees who work in or service the commissary. *See* Ohio Legislative Service Comm'n, 125th Gen. A., Final Analysis, Am. Sub. H.B. 95 (As Passed by the General Assembly), at 561 ("[t]he act expands the purposes for which the commissary fund profits may be used to also permit the profits to be used to pay salary and benefits for employees of the facility, or for any other persons, who work in or are employed for the sole purpose of providing service to the commissary"); note 1, *supra*. *See generally State ex rel. Parsons v. Ferguson*, 46 Ohio St. 2d 389, 391, 348 N.E.2d 692 (1976) (payments for fringe benefits, such as health insurance, "may not constitute 'salary,' in the strictest sense of that word, but they are compensation"); R.C. 325.17 (authorizing county officers, including the sheriff, to hire employees and fix their compensation); 1991 Op. Att'y Gen. No. 91-050, at 2-259 ("[c]ounty appointing authorities have the power to fix their employees' compensation, including fringe benefits, to the extent such power is not constricted by applicable statutory provisions"). Commissary fund revenue may, of course, be used for operating costs of the commissary, and those costs would include the purchase and repair of appliances that are used in the operation of the commissary. *See* R.C. 341.25(B).

We conclude, accordingly, that 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 are not provided for purposes of the general operation of the Mahoning County Justice Center.

Conclusions

Therefore, it is my opinion, and you are advised, as follows:

1. R.C. 341.25(B) permits the Mahoning County Sheriff's Department to expend profits from the commissary fund to pay a non-profit 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 are not provided for purposes of the general operation of the Mahoning County Justice Center.