



2008-061

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

March 17, 2008

ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.STATE.AL.US

Honorable James E. Turnbach  
Attorney, Etowah County Commission  
Turnbach, Warren, Roberts & Lloyd  
Chestnut at Second/Suite A  
Post Office Box 129/200 Chestnut Street  
Gadsden, Alabama 35902

Honorable Roger W. Kirby  
Attorney, City of Gadsden  
Legal Department  
Post Office Box 267  
Gadsden, Alabama 35902-0267

Sheriffs – Prisons and Prisoners – Meals –  
Funds – Sales Tax – Privilege License Taxes –  
County Commissions

Feeding prisoners in the county jail is an  
official part of the duties of the office of the  
sheriff.

The sheriff may contract with a private business  
to feed the prisoners. The business must pay  
any local license tax. The sheriff may purchase  
food products and transfer them to the business  
to be used for feeding the prisoners without  
incurring sales tax. The sheriff may retain any  
surplus from the food service allowance as  
personal income.

Dear Sirs:

This opinion of the Attorney General is issued in response to your requests.

QUESTIONS

1. Is the provision of food services for prisoners in  
the county jail an official part of the duties of the sheriff,  
or can the food operation be operated individually by the  
sheriff?

2. Can the sheriff contract with a private business for food services?
3. Would the business be subject to local license tax?
4. Is the sheriff exempt from sales tax on food for the prisoners?
5. Can the sheriff keep any surplus in the food and service allowances as personal income?

### FACTS AND ANALYSIS

Section 14-6-40 of the Code of Alabama provides for the duty of the sheriff to feed prisoners in the county jail. It states that “[t]he sheriff of the county, except as otherwise provided by existing laws, in person or by his deputy or jailer, shall feed the prisoners in the jail under his jurisdiction in accordance with the terms of this article.” ALA. CODE § 14-6-40 (1995).

The responsibility of the county commission in the feeding of prisoners is set forth in section 14-6-41(b) of the Code of Alabama as follows: “The county commission of each county shall supervise the feeding of all prisoners in the county jails over which it has jurisdiction.” ALA. CODE § 14-6-41(b) (1995).

Section 14-6-42 of the Code of Alabama provides for the following food allowance from the state for each prisoner:

Food for prisoners in the county jail shall be paid for by the state as follows: There shall be allowed such amount as is actually necessary for food for each prisoner daily, and said amount so allowed shall be \$1.75 per capita. In addition to the above amount, there is hereby conditionally appropriated from the General Fund an amount of \$1.25 per capita.

ALA. CODE § 14-6-42 (1995). This section states that sheriffs are entitled to \$1.75 per day for each prisoner for food and, in addition, to \$1.25 per day for each prisoner conditional upon the approval of the Governor. Opinion to Honorable James B. Johnson, Baldwin County Sheriff, dated February 19, 2003, A.G. No. 2003-079.

Section 14-6-43 of the Code of Alabama provides further for a food service allowance from the state. *Holcombe v. Mobile County*, 229 Ala. 77, 155 So. 640 (1934). Section 14-6-43 reads as follows:

(a) The sheriffs of the several counties of the state shall receive pay for services in preparing food, serving food and other services incident to the feeding of prisoners, not including the cost of food to be served to such prisoners, as follows:

(1) For one prisoner, \$1.00 per prisoner per day;

(2) For each prisoner, from two to five prisoners, \$.50 per prisoner per day;

(3) For each prisoner, from six to 10 prisoners, \$.40 per prisoner per day;

(4) For each prisoner, from 11 to 20 prisoners, \$.30 per prisoner per day; and

(5) For each prisoner, from 21 to 85 prisoners, \$.05 per prisoner per day.

(b) In all counties where there are two or more jails, the report of prisoners in said jails shall be made upon the number of prisoners confined, but the sheriff shall be only paid as if all of said prisoners were confined in one jail.

ALA. CODE § 14-6-43 (1995).

Section 36-22-17 of the Code of Alabama governs the disposition of allowances for the use of the sheriff. It provides as follow:

All fees, commissions, percentages, allowances, charges and court costs heretofore collectible for the use of the sheriff and his deputies, *excluding the allowances and amounts received for feeding prisoners, which the various sheriffs of the various counties shall be entitled to keep and retain*, except in those instances where the county commission directs such allowances and amounts to be paid into the general fund of the county by proper resolution passed by said county commission of said

county, shall be collected and paid into the general fund of the county.

ALA. CODE § 36-22-17 (2001) (emphasis added).

This Office has explained in a previous opinion to you that the sheriff is entitled to the food and service allowances and tasked with feeding the prisoners unless the county directs that the allowances be paid into the county general fund under section 36-22-17, in which case the county assumes responsibility for feeding the prisoners. See opinion to Honorable James E. Turnbach, Etowah County Attorney, dated June 14, 1996, A.G. No. 96-00239. That opinion characterized the nature of the sheriff's food service responsibilities as follows: "Although the sheriff is the *official* to whom the responsibility of feeding the prisoners has been delegated, the county commission has supervisory authority over the feeding of the prisoners." *Id.* at 5 (emphasis added).

The *Turnbach* opinion further opined that, inherent in the duty of the county regarding feeding the prisoners, is the power to hire food service personnel. See *id.* This Office has also stated that employees of a state agency are exempt from local licensing requirements, but independent contractors contracting with the agency must comply with such requirements. Opinion to Honorable R.G. Britton, Commissioner, Board of Corrections, dated January 6, 1981, A.G. No. 81-00165. Consistent with these opinions, the duty of the sheriff to feed the prisoners provides implied authority to contract with a private business to fulfill that duty, and that business must pay any local license tax.

Section 40-23-4(a)(11) of the Code of Alabama exempts sales of tangible personal property "to the State of Alabama, to the counties within the state, and to incorporated municipalities of the State of Alabama" from the sales tax levy. ALA. CODE § 40-23-4(a)(11) (2003). You correctly point out that the Alabama Department of Revenue has promulgated Rule 810-6-3-.67, which specifically provides that "[p]urchases by a sheriff of food to be used in feeding prisoners is exempt from sales tax." ALA. ADMIN CODE r. 810-6-3-.67 (2006). Therefore, the sheriff may purchase food products and transfer them to a private business to be used for feeding the prisoners without incurring sales tax.

Section 36-22-17 states that the sheriff may "keep and retain" the food service allowances. This Office has construed similar language in section 36-1-10 of the Code of Alabama that officials authorized to issue passports "retain" the passport fee as providing that the officials retain the fee as personal income. Opinions to Honorable Jane Smith, Circuit Clerk, Madison County, dated March 30, 2001, A.G. No. 2001-143; Honorable William C. Stone, Pike County Probate Judge, dated October 8, 1996, A.G. No. 97-00005; ALA. CODE § 36-1-10 (2001). Furthermore, most of the sheriffs in the state have retained the food and service allowances for personal income for years. In fact, the Examiners of Public

Honorable James E. Turnbach  
Honorable Roger Kirby  
Page 5

Accounts issued a memorandum in 1996 advising the sheriffs that food “expenses should be paid from the food and service allowances which are received from the state for such purposes, and any remaining balance of such funds after feeding the prisoners would belong to the sheriff personally.” *Memorandum of the Examiners of Public Accounts*, dated April 1996, at 11.

An established administrative construction that has been followed for a long time is presumed correct. *Glencoe Paving Co. v. Graves*, 266 Ala. 154, 94 So. 2d 872 (1957); *see also, State v. Consumers Bagging Co., Inc.*, 48 Ala. App. 95, 262 So. 2d 297 (Ala. Civ. App. 1971) (stating that when a longstanding administrative interpretation has stood unchallenged for a lengthy period of time, that fact is to be given favorable consideration by the courts). Accordingly, based on this longstanding practice, it is the opinion of this Office that the sheriff may retain any surplus in the allowances as personal income. This Office understands that the State Ethics Commission has properly been contacted regarding the applicability of the State Ethics Law. This Office does not opine on ethical issues.

#### CONCLUSION

Feeding prisoners in the county jail is an official part of the duties of the office of the sheriff.

The sheriff may contract with a private business to feed the prisoners. The business must pay any local license tax. The sheriff may purchase food products and transfer them to the business to be used for feeding the prisoners without incurring sales tax. The sheriff may retain any surplus from the food service allowance as personal income.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

TK/GWB  
374140/83257-002, -003