



2011-053

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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April 20, 2011

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Honorable Mike Blakely  
Limestone County Sheriff  
101 West Elm Street  
Athens, Alabama 35611

Sheriffs – Meals – Funds – County  
Commissions – Prisons and Prisoners

Any surplus in the food service allowance for feeding prisoners in the county jail should be retained by the Limestone County Sheriff's Office unless the county commission has adopted a resolution directing that the allowance be paid into the county general fund.

If the county adopts such a resolution, it assumes the duty to feed the prisoners.

Based on the facts presented, neither the sheriff nor the county may use the surplus for any purpose other than future expenses in feeding prisoners.

The sheriff should seek funds from all applicable sources as provided by law for feeding prisoners. The state, county, municipalities, and federal government should cooperate in obtaining and providing adequate funding to feed prisoners from their jurisdiction that are housed in the county jail.

Dear Sheriff Blakely:

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

QUESTION

What is the duty of the Sheriff of Limestone County regarding a surplus or delinquency in the funds for feeding prisoners?

FACTS AND ANALYSIS

Your request states that the county commission has asked you to sign an agreement that any surplus in your food service allowance for feeding prisoners in the county jail be paid into the county general fund.

Act 2010-281 of the 2010 Legislative Session is a local act, applicable to Limestone County, providing for the compensation of the sheriff. 2010 Ala. Acts No. 2010-281. Section 1 of the act states that “[t]he sheriff shall not personally financially benefit from the food account used for the feeding of county and state prisoners.” *Id.* The act is silent regarding the disposition of surplus funds.

Section 36-22-17 of the Code of Alabama governs the disposition of monies received by the sheriff, including the food service allowance. ALA. CODE § 36-22-17 (2001). This Office, in construing the statute, has stated that any surplus in the sheriff’s food service allowance should be retained by the sheriff’s office unless the county commission has directed that the allowance be paid into the county general fund on adoption of a resolution. Opinion to Honorable John Hollis Jackson, Jr., Attorney, Chilton County Commission, dated May 19, 2000, A.G. No. 2000-151. That opinion relied on an opinion issued to Honorable James E. Turnbach, Etowah County Attorney, dated June 14, 1996, A.G. No. 96-00239. The *Turnbach* opinion further cautioned that, “[i]n instances where the county commission exercises its discretion to order that the food allowance be paid into the general fund, the county thereby assumes food service responsibilities for feeding the prisoners.” *Id.* at 3.

Regarding the use of surplus funds, 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) (emphasis added). 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 additionally provides 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) (emphasis added).

These sections limit the use of the food service allowance to feeding prisoners. Where a statute enumerates certain things on which it is to operate, the statute must be construed to exclude all things not expressly mentioned. *Ex parte Holladay*, 466 So. 2d 956, 960 (Ala. 1985). Thus, the *Turnbach* opinion recognized that, if the county directed the allowance be paid into the county general fund, the resolution also had to state that the allowance be “used by the county for food preparation.” *Turnbach*, at 3. Consistent with these authorities and based on the facts presented, regardless of whether the sheriff or the county feeds the prisoners, the allowance may not be used for any other purpose.

This Office considered the inadequacy of the food service allowance in an opinion issued to Honorable James B. Johnson, Sheriff, Baldwin County Sheriff’s Office, dated February 19, 2003, A.G. No. 2003-079. That opinion thoroughly addressed other government funding for feeding prisoners, ultimately concluding that the duty is on the sheriff to “seek funds from all applicable sources as provided by law for feeding prisoners in county jails. The state, county, municipalities, and federal government should cooperate in obtaining and providing adequate funding to feed prisoners, from their jurisdiction, that are housed in the county jail.” *Id.* at 5.

### CONCLUSION

Any surplus in the food service allowance for feeding prisoners in the county jail should be retained by the Limestone County Sheriff’s Office unless the county commission has adopted a resolution directing that the allowance is to be paid into the county general fund.

If the county adopts such a resolution, it assumes the duty to feed the prisoners.

Based on the facts presented, neither the sheriff nor the county may use the surplus for any purpose other than future expenses in feeding prisoners.

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Honorable Mike Blakely  
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I hope this opinion answers your question. If this Office can be of further assistance, please contact of my staff.

Sincerely,

LUTHER STRANGE  
Attorney General  
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

LS/GWB

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