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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Counties - Jails - Sheriffs' Funds -  
Sheriffs - Jackson County

The Jackson County Commission  
may not levy a fee for the use of  
county facilities on the Sheriff's Jail  
Fund.

Dear Mr. Porter:

This opinion of the Attorney General is issued in response to your  
request on behalf of the Jackson County Commission.

QUESTION

Because the jail facilities are the property  
of Jackson County and the county general fund is  
responsible for the maintenance and upkeep of  
the jail facilities, can the Jackson County Com-  
mission levy a fee to the sheriff to be paid from  
the Sheriff's Jail Fund for the use of county  
facilities for the jail store, the telephone system,  
and housing of federal inmates?

FACTS AND ANALYSIS

Act 2000-347, which was approved on May 3, 2000, authorized the  
Jackson County Sheriff to operate a jail store and telephone system for  
prisoners within the confines of the county jail. The act also authorized  
the sheriff to contract for the housing of federal inmates in the county  
jail. 2000 Ala. Acts No. 2000-347, 548.

Section 2 of Act 2000-347 requires that all proceeds collected under the act be deposited by the sheriff into the Sheriff's Jail Fund. The sheriff must keep an account of all jail store sales, telephone usage fees, contracts, and other transactions of the Sheriff's Jail Fund for audit purposes. *Id.* at 549. Section 3 of Act 2000-347 states that all profits realized in the operation of the jail store and telephone system and all other funds in the Sheriff's Jail Fund shall be expended at the discretion of the sheriff for law enforcement purposes in Jackson County that are in the interest of the public. *Id.* at 549. Section 4 of Act 2000-347 states that the establishment of the Sheriff's Jail Fund and the use of the proceeds shall not diminish or take the place of any other source of income established for the sheriff or the operation of the office. *Id.* at 549.

Section 14-6-1 of the Code of Alabama gives legal custody and charge of the jail, and all prisoners committed thereto, to the county sheriff. ALA. CODE § 14-6-1 (1995). Under Alabama law, the authority the sheriff has over the jail is totally independent of the county commission, so the sheriff acts exclusively for the state rather than for the county in operating a county jail. *Marsh v. Butler County*, 268 F.3d 1014 (11<sup>th</sup> Cir. 2001).

Section 11-14-10 of the Code of Alabama requires each county within the state to maintain a jail within the county. ALA. CODE § 11-14-10 (1989). This section places an affirmative duty on the county to maintain a jail and keep it in a state of repair. *King v. Colbert County*, 620 So. 2d 623 (Ala. 1993).

In Opinion 2003-201, this Office opined in a similar factual situation that the county commission could not use funds from the Lawrence County Sheriff's Law Enforcement Fund to offset the expenses of operating the jail unless the sheriff agreed to utilize the funds for that purpose. Opinion to Mose Jones Jr., Chairman, Lawrence County Commission, dated July 30, 2003, A.G. No. 2003-201. Act 93-506 authorized the sheriff to retain the funds accruing from the pay telephones and vending machines in the county courthouse annex and jail in a special fund known as the Law Enforcement Fund, which shall be used by the sheriff for law enforcement purposes in the county. The fund is managed exclusively by the sheriff. 1993 Ala. Acts No. 93-506, 844. The language establishing the Jackson County Sheriff's Jail Fund is almost identical to the language establishing the Lawrence County Sheriff's Law Enforcement Fund. Both funds are under the exclusive control of the county sheriff.

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In view of the previous opinion of this Office and the clear intent of the Legislature that the funding sources of the Jackson County Sheriff's Office would not be diminished by the establishment of the Sheriff's Jail Fund, it is the opinion of this Office that the Jackson County Commission cannot levy a fee on the sheriff, to be paid from this fund, for the use of the jail facilities.

CONCLUSION

The Jackson County Commission cannot levy a fee on the sheriff, to be paid from the Sheriff's Jail Fund, for the use of the jail facilities to operate a jail store and telephone system for prisoners.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Don E. Lawley of my staff.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

TK/DEL

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