

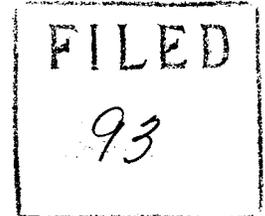
COUNTY CONTRACTS:
COUNTY COURTS:
COUNTY JAILS:
DEPARTMENT OF CORRECTIONS
AND HUMAN RESOURCES:
JAILERS:
JAILS:
PRISON:

Sheriffs may not contract out the operation of the county jails to private entities. The Department of Corrections and Human Resources may not contract out the operation of adult correctional facilities to private entities, except for the operation of halfway houses.

July 18, 1983

OPINION NO. 93-83

The Honorable Roger B. Wilson
Senator, District 19
State Capitol Building
Jefferson City, Missouri 65101



Dear Senator Wilson:

You have requested an official opinion of this office on the following question:

Does a county or state have the authority to contract for the construction or operation of a corrections facility with a private entity, including both profit and not-for-profit private entities?

Subsequent to submission of this question, it was determined that your concern is with the authority of counties and the state to enter into service agreements with a private entity for the operation of adult correctional facilities. Accordingly, our opinion is limited to such service agreements.

I.

Counties

Section 70.220, RSMo 1978, states:

Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or

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with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision. If such contract or cooperative action shall be entered into between a municipality or political subdivision and an elective or appointive official of another municipality or political subdivision, said contract or cooperative action must be approved by the governing body of the unit of government in which such elective or appointive official resides. [Emphasis added.]

Counties come within the definition of the words "political subdivision" in Section 70.210(2), RSMo 1978. Therefore, counties may contract with a private entity for the operation of any public facility if the operation of said public facility is within the scope of the powers of that county.

Section 49.310, RSMo 1978, authorizes counties to acquire a site for, construct, reconstruct, remodel, repair, maintain and equip the county jails. However, the operation of county jails is conferred upon the county sheriffs. Section 221.020, RSMo 1978, states:

The sheriff of each county in this state shall have the custody, rule, keeping and charge of the jail within his county, and of all the prisoners in such jail, and may appoint a jailer under him, for whose conduct he shall be responsible.

This statute shows that the day-to-day operation of county jails is not vested in the county courts but is a duty of the county sheriffs. County sheriffs are not "political subdivisions" under Section 70.210(2), RSMo 1978. Therefore, Section 70.220, RSMo 1978, does not grant sheriffs authority to contract out the operation of the county jail to a private entity.

Section 221.020, RSMo 1978, does authorize the sheriff to appoint a jailer. In Opinion No. 60, Medley, 1955, copy enclosed, this office concluded that the jailer is compensated pursuant to Section 57.250, RSMo 1949, now, RSMo 1978, as are deputies and

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assistants of the sheriff. It follows from this opinion that the jailer is an employee, as are the sheriffs' deputies and assistants, and not an independent contractor. Therefore, we find no authority for a sheriff to contract out the operation of the county jail to a private entity.

II.

State

The Department of Corrections and Human Resources manages adult state corrections facilities. Section 217.015.1, RSMo Supp. 1982, states:

The department of corrections and human resources shall supervise and manage all penal, correctional, training, rehabilitation and reformatory institutions, and probation and parole of the state of Missouri.

See also, Section 217.155, RSMo Supp. 1982.

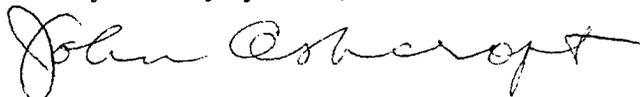
We are aware that Section 217.430.1, RSMo Supp. 1982, authorizes the department to contract with private entities for the establishment of halfway houses; however, we find no other statute authorizing departmental service contracts for the operation of correctional facilities. See, Section 217.010(4), RSMo Supp. 1982 (defining "facilities").

CONCLUSIONS

It is the opinion of this office that:

1. Sheriffs may not contract out the operation of the county jails to private entities.
2. The Department of Corrections and Human Resources may not contract out the operation of adult correctional facilities to private entities, except for the operation of halfway houses.

Very truly yours,



JOHN ASHCROFT
Attorney General

Enclosure: Opinion No. 60, Medley, May 12, 1955