

SUBJECT: Commissioners court approval of jail commissary contracts

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 5 ayes — Ramsay, G. Lewis, Brown, Farabee, Shields

0 nays

4 absent — Chisum, Hilderbran, Krusee, Salinas

WITNESSES: For — Jim Allison, County Judges & Commissioners Association; Donald Lee, Texas Conference of Urban Counties; G.K. Maenius, Tarrant County Commissioners Court

Against — Chris Kirk, Sheriff's Association of Texas

BACKGROUND: Under Local Government Code, sec. 351.0415, a county sheriff may operate or contract with another person to operate a commissary for use by county jail prisoners. The sheriff has exclusive control of commissary funds, must maintain commissary accounts showing proceeds and the amount and purpose of disbursements, and must accept new bids to renew commissary supplier contracts every five years.

The sheriff may use commissary proceeds only to:

- ! fund, staff, and equip a program addressing the social needs of county prisoners, including an educational or recreational program and religious or rehabilitative counseling;
- ! supply prisoners with clothing, writing materials, and hygiene supplies;
- ! establish, staff, and equip the commissary operation; or
- ! fund, staff, and equip a library for educational use of prisoners.

At least once each county fiscal year or more often if the commissioners court desires, the auditor shall without advance notice, fully examine the jail commissary accounts, verify their correctness, and report to the commissioners court.

Attorney general opinions have interpreted the statute as allowing a sheriff to enter into a commissary contract without consulting the county purchasing agent (AG Opinion No. JM-1121, 1989) and that the commissioners court may not interfere with the sheriff's discretion in contracting for operation of the commissary (AG Opinion No. DM-67, 1991).

In 1999, the 76th Legislature approved HB 2846 by Brimer to require a sheriff in a county containing two or more municipalities (each with a population of 250,000 or more) to provide the county commissioners court any contract relating to the county jail commissary within 10 days after the date the contract was made. This provision applies only to Tarrant County, where both Fort Worth and Arlington have populations of more than 250,000.

According to the 2000 Census, four counties — Harris, Dallas, Tarrant, and Bexar — have populations of more than 1 million.

DIGEST:

CSHB 1890 would amend Local Government Code, sec. 351.0415 to allow county commissioners courts in counties with populations of more than 1 million to approve new bids to renew jail commissary contracts. The sheriff would have to provide a copy of all contracts related to the jail commissary within 10 days of when the contract is made.

Sheriffs in counties with populations of more than 1 million no longer would have exclusive control of commissary funds and would have to receive commissioner's court approval for any disbursement of commissary proceeds.

The bill would be effective September 1, 2001.

SUPPORTERS  
SAY:

By requiring all commissary contracts to be approved, CSHB 1890 would enable commissioners courts in the largest urban counties to hold accountable and help run county jails' financial operations more efficiently. Jail expenses can require one-third of the county's general fund tax revenue, and taxpayers deserve to have this money protected and monitored. Commissary funds can be applied to a broad range of uses, and this bill would allow greater accountability for how these funds were spent.

CSHB 1980 would grant commissioners courts the same fiscal oversight for the jail commissary as they had over all other county funds. Under current law, only the jail commissary fund is managed by a single elected official with no approval from commissioners court. The Texas Constitution and state laws already grant county commissioners authority to make financial decisions about sheriffs' department staffing and construction of jails. Jail commissaries should not be slush funds completely under the control of sheriffs. CSHB 1890 would restore fiscal checks and balances to the management of commissary funds.

The county commissioners, rather than the sheriff, assume the liability arising from the operations of and expenditures from the jail commissary fund. The commissioners must authorize legal expenses to defend any lawsuits regarding the commissary operations, and all county taxpayers would pay any judgments or damage awards. Therefore, the county commissioners should have some oversight authority for these funds.

CSHB 1890 would help prevent lame duck sheriffs from tying the hands of their successors. Tarrant County's continuing difficulties with former Sheriff David Williams, even after the enactment of HB 2846 last session, demonstrates the inadequacy of current laws in making the administration of commissary funds accountable to county commissioners and the public. Tarrant County spent more than \$60,000 in fees to outside legal counsel to protect the incoming sheriff from commissary contracts signed by Williams. The proposed contracts to provide religious services for inmates were authorized under Local Government Code, sec. 351.0415(b)(1), but spending all available commissary funds for these programs would have left nothing for other services for jail inmates.

CSHB 1890 would allow, but not require, reviews of commissary contracts in larger urban counties with large jail populations. Commissioners in large urban counties have the experience and expertise available to review and manage contracts. The bill would exempt smaller counties where the commissary may be a simple function operated out of a cigar box by a part-time deputy.

OPPONENTS  
SAY:

CSHB 1890 would continue the erosion of sheriffs' constitutional and statutory duties to administer the jail. Sheriffs have the responsibility for the security of jail facilities, including contractors handling the commissary. CSHB 1890 could compromise the sheriffs' ability to provide for the safety of jail staff members and inmates. It could complicate and delay the awarding of a contract to provide needed services to inmates and could serve as a breeding ground for further conflicts between sheriffs and commissioners courts.

HB 1980 would unnecessarily force the state to resolve what was a local problem in Tarrant County. Current law provides adequate checks and balances, and the other 253 Texas sheriffs have done a responsible job in managing commissary funds. Tarrant County voters addressed the problems with Sheriff Williams when they defeated his bid for reelection in 2000.

OTHER  
OPPONENTS  
SAY:

CSHB 1890 would apply to Harris, Dallas, and Bexar counties even though they have not identified the same problems as Tarrant County. The bracket should be restored to make CSHB 1890 applicable only to Tarrant County.

NOTES:

HB 1890 as originally filed would have required county commissioners to approve jail commissary contract renewals and expenditure of commissary contract proceeds in all counties.