



THE ATTORNEY GENERAL OF TEXAS

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March 31, 1977

Honorable Ben Z. Grant
Chairman
Judiciary Committee
Texas House of Representatives
P. O. Box 2910
Austin, Texas 78767

Letter Advisory No. 133

Re: Constitutionality of
a proposal to create multi-
county jail commission to
construct and operate
regional jails.

Dear Representative Grant:

You have requested our opinion concerning the constitutionality of certain proposed amendments to article 4413(32c), V.T.C.S., set out in House Bill 1453. In this regard you ask:

1. Is it a violation of the Texas Constitution for two or more political subdivisions to jointly finance, construct, own and operate a jail facility which, by geographical necessity, must be located within the boundaries of one of the entities and outside the geographic boundaries of the other participating entities?
2. Is it a violation of the Texas Constitution if the political subdivisions involved designate a jail commission to operate the jail facility and take custody of the prisoners delivered to the jail by the sheriffs or other law enforcement officers of the participating subdivisions?

House Bill 1453 would amend section 4 of article 4413(32c), V.T.C.S., the Interlocal Cooperation Act, by adding a new subsection (f) which would allow the governing body of a political subdivision "[b]y resolution . . . [to] contract with other political subdivisions . . . to participate in the ownership, construction and operation of a regional jail facility to be located within the geographic boundaries of one of the

participating political subdivisions." Under the provisions of section 4 of article 4413(32c), V.T.C.S., local governments may enter into contracts with one another for any governmental function or service which the governmental unit is authorized to perform.

Article 11, section 2 of the Texas Constitution provides that the "construction of jails . . . shall be provided for by general laws." Therefore, we find no constitutional provision specifically relating to the construction of jails which would render unconstitutional legislation permitting those political subdivisions which are statutorily authorized to provide for jails (see V.T.C.S. art. 5115 et seq.) to enter contracts for the construction and operation of regional jails.

Your first question addresses the additional issue of whether the fact that such a regional facility would necessarily lie outside the boundaries of some of the political entities participating in such an agreement would render the authorizing legislation unconstitutional. We find no constitutional requirement regarding the location of jail facilities.

In a supplementary memo you have expressed concern regarding the power of a county to own property outside its own geographic boundaries. No constitutional provision appears to prohibit county ownership of property outside its geographic boundaries. See Attorney General Opinions H-462 (1974); H-392 (1974). Therefore, we can determine no constitutional basis for invalidation of legislation authorizing the governing body of a political subdivision to enter into a contract of joint ownership of a regional jail facility located in another county.

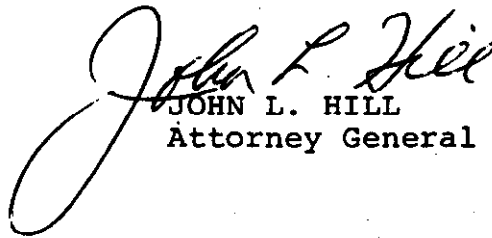
While the proposed authorization of agreements between political subdivisions for the ownership, construction and maintenance of regional jail facilities apparently violates no constitutional restrictions on jail location, we note possible conflicts with existing statutory provisions which the Legislature may wish to address to avoid questions of implied repeal. See Attorney General Opinion M-637 (1970); V.T.C.S. arts. 1603, 1605, and 2370b. See also V.T.C.S. art. 5116 (with regard to the portion of the bill involved in your second question). In summary, as we have found no constitutional provisions prohibiting an agreement between political subdivisions jointly to construct and operate a regional jail which would lie outside the boundaries of some of the political subdivisions, we answer your first question in the negative.

With regard to your second question, House Bill 1453 provides three alternative methods by which the political subdivisions participating in a regional jail facility may by agreement establish supervisory and operational procedures and appoint staff to carry out such procedures. You ask whether the second alternative method violates the Texas Constitution. House Bill 1453 sets out the second alternative as follows:

(iii) The participating political subdivisions may establish by agreement that ... (b) ... a committee, composed of one representative from each political subdivision participating in the regional jail facility may be established to appoint a jailer and to supervise the maintenance and operation of the jail. . . .

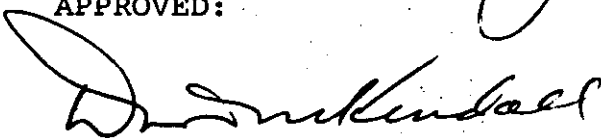
The two additional alternatives proposed by House Bill 1453 provide for supervision of the jail by either a sheriff or police chief. Since we find no constitutional provision requiring a jail to be supervised by either a sheriff or police chief, the proposed legislation authorizing the establishment of a supervisory committee by political subdivisions operating a regional jail appears not to run afoul of the Constitution. We therefore answer your second question in the negative.

Very truly yours,



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APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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