



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 13, 1996

The Honorable Jeb McNew
Montague County Attorney
P.O. Box 336
Montague, Texas 76251-0336

Letter Opinion No. 96-085

Re: Use of county jail inmates to cut trees
on private land in exchange for payment to
the county of the proceeds from sale of the
wood (ID# 38660)

Dear Mr. McNew:

You have asked this office whether Montague County Jail inmates may be used to cut trees on private land when proceeds from the sale of the wood are paid to the county.¹

As you point out in the brief attached to your request, it has long been the position of this office, based on our reading of article 43.10 of the Code of Criminal Procedure, that "a sheriff may not work county prisoners on private operations under any circumstances; county prisoner labor may be utilized only on county projects." Attorney General Opinion H-1038 (1977) at 1. You ask, however, whether this position is affected by the addition in 1993 of Local Government Code section 351.201, authorizing the establishment of county jail industries programs. In particular, you ask whether the provision in section 351.201(e) that such a program may be operated at "any . . . suitable location" implies that sheriffs may work county prisoners on private premises.

In our view, the language and legislative history of section 351.201 do not support the view that jail inmates may be used in private, profit-making operations. Section 351.202(b) lists the purposes of a jail industries program as being to

(1) provide adequate, regular, and suitable employment for the vocational training of inmates;

(2) reimburse the county for expenses caused by the crimes of inmates and the cost of their confinement; or

(3) provide for the distribution of *articles and products produced* under this subchapter to:

(A) offices of the county and offices of political subdivisions located in whole or in part in the county; and

¹We note that this opinion is limited to the set of facts you describe.

(B) nonprofit organizations that provide services to the general public and enhance social welfare and the general well-being of the community. [Emphasis added.]

It is clear, particularly in light of the emphasized language, that the statute as written contemplates some sort of workshop or craft production, not the renting out of convict manual labor. Moreover, the legislative history of the statute does not suggest such an interpretation. According to the bill analysis for House Bill 1056, Seventy-third Legislature, the purpose of the bill is to “expand . . . the purposes to which inmate labor may be put to include labor in a County Jail Industries Program and maintenance work.” There is no indication in the bill analysis that a jail industries program is intended to permit the employment of convict labor by private persons. House Comm. on County Affairs, Bill Analysis, H.B. 1056, 73d Leg. (1993).

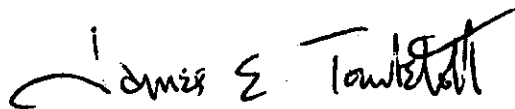
Nor is there any particularly persuasive evidence of such intentions in the recording of the public hearing of the House Committee on County Affairs on March 31, 1993, at which the version of House Bill 1056 containing the relevant language on “suitable location” was offered and reported favorably to the House. At most, the testimony offered by Chief Dan T. Richards suggests that this language was intended to enlarge the sorts of projects on which prisoners could work to include non-profit organizations. Chief Richards did testify, in response to the question of whether the measure would modify existing law with respect to private persons working inmates, “I don’t think it necessarily rules it out.” This sort of ambiguous testimony from a single witness, however, is insufficient evidence that the legislature intended by this enactment to overrule article 43.10.

Rather we believe, as your brief suggests, that Local Government Code section 351.201 and article 43.10 of the Code of Criminal Procedure may be harmonized by reading article 43.10(4)’s requirement that prisoners be “put to labor upon public works and maintenance programs” as limiting the sorts of activities in which county jail industries programs can be involved. Such a limitation would not permit the working of inmates in such programs on private property.

S U M M A R Y

Local Government Code section 351.201, establishing county jail industry programs, does not affect the prohibition in article 43.10, Code of Criminal Procedure, against using county prisoners to work on private property.

Yours very truly,

A handwritten signature in black ink, appearing to read "James E. Tourtelott". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the right.

James E. Tourtelott
Assistant Attorney General
Opinion Committee