

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

June 18, 2003

Opinion No. 03-075

Inmate labor benefiting private party

QUESTION

May an inmate in a county or municipal jail or workhouse be employed on private property where there is pecuniary benefit to the county and incidental benefit to the property owner?

OPINION

Yes. An inmate's labor may benefit a private party, but only where such labor is performed as part of a court-approved work release program or under the supervision of a commission established pursuant to Tenn. Code Ann. § 41-2-134.

ANALYSIS

Tennessee provides that persons committed to the custody of a county workhouse or similar place of confinement may be temporarily released to perform labor for sentence reduction credits or pay. *See* Tenn. Code Ann. §§ 41-2-101, 41-2-102, 41-2-123, 41-2-128, 41-2-146 and 41-2-147. Inmate labor, regardless of its objective, is referred to as "work release" at Tenn. Code Ann. § 41-2-149(a).

The kind of labor to which inmates in a county or municipality may be put is to be prescribed by a board of workhouse commissioners or any proper alternative as provided at Tenn. Code Ann. §§ 41-2-104, 41-2-105 and 41-2-134. In addition, a sentencing court may prescribe appropriate types of employment as part of an inmate's sentence. Tenn. Code Ann. §§ 41-2-148(b)(2) and 41-3-106(b)(2).

Accordingly, a court imposing a work release sentence, or a workhouse commission established pursuant to Tenn. Code Ann. § 41-2-134, has discretion in determining the appropriate beneficiary of inmate labor. *See* Tenn. Code Ann. §§ 41-2-105, 41-2-148 and 41-3-106. But any "sheriff, jailer or other person responsible for the care and custody of inmates housed in a county or municipal jail or workhouse" is barred from "personal gain, profit or benefit" from inmate labor.

Tenn. Code Ann. §§ 41-2-148(a) and 41-3-106. This prohibition also applies to any “business partially or wholly owned by such sheriff, jailer or other person.” *Id.* In contrast, no workhouse commission board or court approval is needed for employment of inmates on behalf of a charitable organization or a nonprofit corporation. *See* Tenn. Code Ann. §§ 41-2-148(b)(2) and 41-3-106(b)(2).

Consequently, it is the opinion of this office that an inmate’s labor may result in benefit, whether incidental or not, to a private property owner if the labor is performed as part of a court-approved work release program or under the supervision of a commission established pursuant to Tenn. Code Ann. § 41-2-134. *See* Tenn. Code Ann. §§ 41-2-148(b) and 41-3-106(b).

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

THOMAS E. WILLIAMS, III
Assistant Attorney General

Requested by:

The Honorable Garry Brown
28th District Attorney General
113-B West Eaton Street
Trenton, Tennessee 38382