

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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NASHVILLE, TENNESSEE 37202

November 7, 2003

Opinion No. 03-141

Alternative Misdemeanor Jail Facilities

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**QUESTIONS**

1. Whether a county may operate an alternative misdemeanor jail facility to house inmates where the inmate must prepay housing costs before he or she may be incarcerated in that facility.
2. Whether the County Mayor, General Sessions Judge or Sheriff can delegate to private citizens the authority to house and oversee inmates housed at an alternate facility other than the county jail without the approval of the county commission.
3. Whether the General Sessions Judge may give inmates an option to serve 48 hours in a facility operated by private citizens if they prepay \$125 dollars a day for that privilege instead of serving the time in the overcrowded county jail.
4. Whether a county may operate a jail facility where entry is based on ability to pay and not the crime convicted.
5. Whether a county may operate a jail facility where a defendant must pay housing costs up front before serving the sentence.
6. Does a judge by giving the defendant an option to serve his or her time in the overcrowded county jail or pay to serve the time elsewhere eliminate any problems a county might have with the housing of inmates?
7. If the answer to the first question if yes, can the pay before you serve requirement be only for male inmates while the female inmates have to serve their time in jail.

**OPINIONS**

1. No. Requiring an inmate to prepay before being housed in a certain facility would violate the Equal Protection Clause of the United States Constitution.
2. No. According to Tenn. Code Ann. §§ 41-2-101 and 55-10-403 an alternative facility

is permissible, but only if it is operated pursuant to a contract approved by the county legislative body.

3. See answer to Question 1.

4. See answer to Question 1.

5. See answer to Question 1.

6. The use of alternative misdemeanor jail facilities may help eliminate overcrowding in a county jail. For example, the DUI statute contemplates that jail sentences for DUI convictions be promptly served. *See State v. McKnight*, No. 02C01-9810-CC-00310, 1999 WL 569758 at \*4, (Tenn. Crim. App. Aug 5, 1999) *app. denied* (Legislative intent is that DUI offenders begin serving their sentences within 30 days of conviction. If the sheriff is of the opinion that space will not be available within 90 days, the sheriff may arrange for alternative facilities.).

7. See answer to Question 1.

### ANALYSIS

Tenn. Code Ann. § 41-4-103 defines the purpose of a “jail” as follows:

In addition to convicts sentenced to imprisonment in the county jail, the jail is used as a prison for the safekeeping or confinement of the following persons: (1) Persons committed for trial for public offenses; (2) Convicts sentenced to imprisonment in the penitentiary, until their removal thereto; (3) Persons committed for contempt on civil process; (4) Persons committed on failure to give security for their appearance as witnesses in criminal cases; (5) Persons charged with or convicted of a criminal offense against the United States; (6) Insane persons, pending transfer to the insane hospital, or other disposition; and (7) All other persons committed thereto by authority of law.

Additionally, Tenn. Code Ann. § 41-2-101 authorizes counties, through their county legislative bodies to “establish, construct and maintain portable, movable or stationary workhouses, as the legislative bodies may, in their discretion and wisdom deem advisable for the best interest of the county.” Subsection (b) states that the “county legislative body may provide such lands, buildings and articles of any kind as may be necessary for a workhouse for such county.”

In *State ex rel. Hurst v. Sullivan County*, 173 Tenn. 414, 120 S.W.2d 32, 33 (Tenn. 1938), the Supreme Court stated that a “jail is controlled and supervised by the sheriff of the county, while the workhouse is managed and directed by a board of commissioners.” In Op. Tenn. Atty. Gen. 90-101 (November 14, 1990) regarding DUI sentences, this Office opined:

“Workhouse” is also partially defined by the *Hurst* case, which stated that “the workhouse is managed and directed by the board of commissioners.” This partial definition is given more meaning by T.C.A. § 41-2-103, which provides in pertinent part:

. . . to sentence such prisoners to the workhouse of the county, portable, movable, or stationary, as may be provided and established in the county.

This statute stresses the flexible nature of what may be designated as a workhouse. The designation of a workhouse is, therefore, not tied to a certain type of physical structure, but rather, is dependent upon the authorities overseeing and controlling the activities of the workhouse.

In conclusion, for the purposes of T.C.A. § 44-10-403(a), any facility which adequately confines the convicted person and is controlled by the proper authorities in the same manner as other jail or workhouses facilities may appropriately be designated as a jail or workhouse.

The statute concerning DUI sentences provides as follows:

As used in this subsection “alternative facilities” include, but are not limited to, vacant schools or office buildings or any other building or structure owned, controlled or used by the appropriate governmental entity that would be suitable for housing such offenders for short periods of time on an as-needed basis. **A governmental entity may contract with another governmental entity or private corporation or person for the use of alternative facilities when needed and governmental entities may, by agreement, share use of alternative facilities.**

Tenn. Code Ann. § 55-10-403(p)(2) (emphasis added). Subsection (p)(1) states that the alternative facility must be approved by the appropriate county or municipal legislative body.

Concerning the DUI statute, the Court of Criminal Appeals in *State v. McKnight*, No. 02C01-9810-CC-00310, 1999 WL 569758 at \*4, (Tenn. Crim. App. Aug 5, 1999) *app. denied* (copy attached), stated:

This act specifically applies only to sentences for DUI. This law clearly expresses the legislative intent that DUI offenders begin serving their sentences within thirty days of conviction if space is available. If the sheriff is of the opinion that space will not be available within ninety days, the legislature expresses its intent that the sheriff arrange for alternative facilities for the incarceration of the offender. The legislature has clearly expressed its intent that jail sentences for DUI convictions be promptly served. We believe, however, that the legislature has also clearly expressed its intent that the failure of the sheriff to require a DUI offender to serve a sentence within a

certain period of time does not relieve the offender from the requirement of serving the sentence.

Based on the above analysis, it is opinion of this Office that a county executive, general sessions judge or sheriff may delegate to private citizens the authority to operate an alternative misdemeanor jail facility provided that such facility is operated pursuant to a contract approved by the county legislative body.

You have also asked whether the county may require an inmate to prepay housing costs before being housed in such an alternative facility, and whether this requirement may apply only to male inmates while female inmates are required to serve their time in jail. However, it is the opinion of this Office that housing an inmate in a facility based upon the ability to pay or based on gender would violate the Equal Protection Clause of the United States Constitution which requires that the State treat all persons and entities the same under like circumstances and conditions. *Genesco, Inc. v. Woods*, 578 S.W.2d 639, 641 (Tenn. 1979).

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