

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

December 13, 2005

Opinion No. 05-177

Validity of Tenn. Code Ann. § 41-8-107(c) Regarding the Use of Subsidies Received for Housing State Prisoners in Local Correctional Facilities

---

**QUESTION**

Was Tenn. Code Ann. §41-8-107(c), regarding the use of subsidies received by counties from the State for housing state prisoners in local correctional facilities, implicitly repealed by the legislative restructuring of the county reimbursement program in 1988 or by any subsequent legislative action?

**OPINION**

Yes, Tenn. Code Ann. §41-8-107(c) has been implicitly repealed and is not enforceable.

**ANALYSIS**

The County Correctional Incentives Act of 1981 was enacted to provide financial incentives to counties to house additional nondangerous felony offenders locally. The purpose was two-fold: (1) assist in alleviating overcrowding in state correctional facilities and reducing high operation costs; and (2) assist in upgrading local correctional facilities and programs. Tenn. Code Ann. §41-8-102. Tenn. Code Ann. §41-8-107(c) provides that if a county facility has been inspected and certified pursuant to the most recently established state jail standards, the entire state subsidy may be used for current operating expenses. In all other situations, seventy-five percent (75%) of the subsidy must be used for improving correctional programs or facilities. Tenn. Code Ann. §41-8-107(c) has not been amended since 1985.

“The cardinal rule of statutory construction is to effectuate legislative intent, with all rules of construction being aides to that end.” *Browder v. Morris*, 975 S.W.2d 308, 311 (Tenn. 1998). Where two acts conflict and cannot be reconciled, the prior act will be repealed or amended by implication to the extent of the inconsistency between them. *Brewer v. Lincoln Brass Works, Inc.*, 991 S.W.2d 226, 229 (Tenn. 1999).

Prior to 1988, counties were paid a flat rate subsidy to house state inmates in local facilities. Certified facilities were paid a higher subsidy than noncertified facilities. Tenn. Code Ann. §41-8-106 (Supp. 1987). In 1988 the General Assembly provided, instead, for a reimbursement rate for counties to be set annually in the general appropriations act. Chap. 869 of the Public Acts of 1988;

Chap. 462 of the Public Acts of 1989.<sup>1</sup> Effective July 1, 1989, counties are reimbursed for housing convicted felons pursuant to the General Appropriations Act and according to the rules and regulations for determining reasonable allowable costs, including debt service, as promulgated by the Department of Correction in consultation with the Comptroller of the Treasury. Chap. 462 of the Public Acts of 1989; Tenn. Code Ann. §41-8-106(c)(1)(Supp. 2005).

Originally, the rules promulgated by the Department of Correction mirrored the requirement in Tenn. Code Ann. §41-8-107 that in non-certified jails seventy-five percent (75%) of the subsidy must be used to fund improvements in correctional programs or facilities. However, effective July 1, 1989, the restriction was deleted from the rules. See Rules of the Tennessee Department of Correction, Division of County Programs, Rule 0420-2-3-.01 *et. seq.*

The relevant state agencies have considered Tenn. Code Ann. §41-8-107(c) implicitly repealed by the legislative change in the reimbursement procedure. Believing that the reimbursement due counties for housing state prisoners is determined exclusively in the appropriations act and the rules promulgated by the Department of Correction, no state agency has enforced the provisions of Tenn. Code Ann. §41-8-107(c) for many years. The interpretation of a statute by those charged with its administration is entitled to substantial deference. *Consumer Adv. Div. v. Greer*, 967 S.W.2d 759, 761 (Tenn. 1998); *Riggs v. Burson*, 941 S.W.2d 44, 50 (Tenn. 1997).

It is the opinion of this Office that the requirement in Tenn. Code Ann. §41-8-107 that noncertified counties use seventy-five percent (75%) of their subsidy to fund correctional improvements was implicitly repealed by the legislative restructuring of the county reimbursement program in 1988 from a flat rate subsidy system to a system of reimbursement of reasonable allowable

---

<sup>1</sup>The 2005 general appropriations act provides, for example:

From the appropriations made to State Prosecutions in Section 1, Title III-7, payments to reimburse counties for housing state prisoners shall not exceed \$35.00 per inmate per day. Provided, however, the \$35.00 per inmate per day limitation on reimbursement payments shall be inapplicable to the extent the state is obligated by the specific terms of a written contract to provide reimbursement at a rate in excess of \$35.00 per inmate per day, but only to the extent of that contractual obligation.

costs and is not enforceable. Requiring use of monies to fund correctional improvements runs counter to the concept of reimbursing counties for their reasonable allowable costs.

PAUL G. SUMMERS  
Attorney General

MICHAEL E. MOORE  
Solicitor General

KIMBERLY J. DEAN  
Deputy Attorney General

Requested by:

Steven E. Elkins  
Chairman, Board of Control  
Tennessee Corrections Institute  
8th Floor, Andrew Jackson Building  
500 Deaderick Street  
Nashville, TN 37243-1420