

OFFICE OF SHERIFF

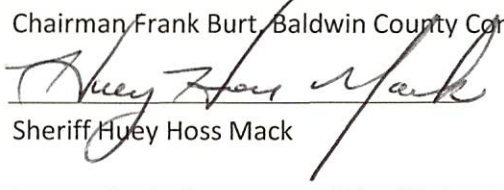
BALDWIN COUNTY, ALABAMA
SHERIFF HUEY HOSS MACK



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August 14, 2018

Memorandum

TO: Chairman Frank Burt, Baldwin County Commission
FROM: 
Sheriff Huey Hoss Mack
RE: Inmate food allowance and Sheriffs food bill fund

Over the past several months there has been much conversation by the Governor of the State of Alabama, as well as, other executive and legislative branch elected officials, regarding the laws which relate to the feeding of inmates in county jails in Alabama.

I personally have been involved in several meetings and consultations regarding this matter. As you are aware, there are several statewide statutes that govern the overall feeding of inmates and the funds which relate to the feeding. I feel it necessary to brief the County Commission on the latest involved in these discussions and offer some suggestions for corrective action.

First, the situation in Baldwin County.

Baldwin County Sheriff's Corrections Center receives from the State of Alabama, under Alabama Title 14-6-40 and 14-6-42, \$1.75 per diem for each inmate to purchase food and feed those inmates. As you are aware, the Baldwin County Sheriff's Office currently has a contract with Aramark Industries to provide for the menus, food, food preparation, and food delivery to the inmates within the Baldwin County Sheriff's Correction Center. Currently, our cost for this is approximately \$3.09 per day for inmates.

The Baldwin County Sheriff's Office also has a contract with the United States Department of Justice, United States Marshals Service, and United States Immigrations Custom Enforcement Office; for the purpose of housing and feeding federal inmates. The daily per diem received for these inmates is \$40 per day. Through this contract, Baldwin Sheriff's Office has been able to use monies to supplant the overall feeding of the inmates which enables us to make up the deficiency we have in funding by the State of Alabama, to feed inmates.

The first point in question recently is; under current Alabama state law, the Sheriff is charged with the personal responsibility for the feeding of inmates within the County jail. It has been ruled in several different actions at the end of a fiscal year, should there be any monies left in the "food bill account", the Sheriff could withdraw from those funds claiming it as personal income, pay the appropriate federal

and state taxes, and retain that money. This, as you imagine, is one of the first areas of controversy which has shadowed the feeding of inmates in a negative light in the State of Alabama.

Also, up for a great deal of discussion, has been Alabama Title 14-6-43, which provides for the preparation and services, in supervising the feeding of inmates. This particular statute is commonly referred to as the "nickel account", due to the fact it provides \$.05 per inmate, per day, to be paid to the Sheriff for these services. On July 10, 2018, there were two memos issued. One by the Governor's Office of General Counsel to the Governor of the State of Alabama, and one by Governor Kay Ivey to the State Comptroller, Kathlyn Baxter, regarding this matter. At controversy in this case, are three Attorney General opinions which were issued.

In 2000, Attorney General Bill Pryor issued an opinion stating the key and retain language regarding the funds, are related to the Sheriff's Office and not the Sheriff personally.

Then in 2008, Attorney General Troy King issued a contrary opinion which maintained to keep and retain language as it relates specifically to the person of Sheriff and not to the Sheriff's Office, as related in the 2000 opinion. Based upon that action the Alabama State Comptroller, in 2008, required all sheriffs to keep and receive the monies derived from the nickel account and such funds would be listed under their personal Social Security number and the sheriff will be forced to pay taxes upon the money from that day forward.

In 2011, Attorney General Luther Strange issued another opinion related to the opinion issued by Attorney General Bill Pryor in 2000, to agree the money should be retained by the Sheriff's Office and not the individual Sheriff. He also stated any surpluses should be carried over for the feeding of inmates.

As you are aware, an Attorney General's opinion in the State of Alabama is considered law until otherwise ruled by a court or amended by legislation.

Currently, the Baldwin County Sheriff's Office, as stated before, contracts the services of feeding the inmates to Aramark Industries. I, as Sheriff, have never collected any of the "\$1.75 funds" as personal income. As stated in the numbers above, you can easily see there would be a deficiency if we did not have the federal contract.

Based upon Governor Ivey's memo of July 10, 2018, the "nickel account" money is now going to the Baldwin County Sheriff's Office Food Bill Account and not me personally.

I have been and will always be a strong advocate on two issues. One, all monies intended for the feeding of inmates should be used for the feeding of inmates. And two, the Sheriff should receive no personal compensation or the ability to receive any compensation directly related to the feeding of inmates.

While in Baldwin County we, in principle, follow these two precepts, it is not law. I am in favor of corrective action.

Currently, as I understand it there are three options which can be utilized to correct the situation. Option one, the Governor of the State of Alabama, has the authority to direct the Alabama Department of Corrections to provide food to each individual County jail for the purposes of feeding inmates. Currently, the DOC receives food for the state prisons and purchases this food in bulk. Since all inmates in the County jail are considered state inmates, as governed by prior opinions, this could directly fall

under the Department of Corrections to provide this food. In that case scenario the \$1.75, the Sheriff's and the County currently receive, would just be diverted back to the Department of Corrections.

Option two, under Alabama law the Commission of each County can exercise their authority to take over the feeding and supervision of the feeding of inmates within the County jail. This can be done by a resolution, by the County Commission, in which they would then take over the purchasing, food planning, and food preparation of the inmates.

Option three, the current statutes Alabama, title 14-6-40; Alabama title 14-6-42; Alabama title 14-6-43, can be amended through statewide, and perhaps, local legislation.

I have consulted with Representative Steve McMillan and members of the Baldwin County Legislative Delegation to consider option three.

Option one, will be presented to the Governor of the State of Alabama by the Alabama Sheriffs Association for consideration.

That leaves us with option two. I am formally asking the Baldwin County Commission to consider and render a decision as to if they wish to exercise this option, which is to take over the feeding of inmates in the Baldwin County Sheriff's Correction Center. This would include the purchasing of food, as well as, the dietary plans and food preparation on a daily basis.

I'll be glad to meet with you in a work session regarding further explanation and discussion on this matter.

Thank you for your consideration.

Cc: Commissioner Charles Gruber
Commissioner Tucker Dorsey
Commissioner Chris Elliott
Administrator Ron Cink
Mr. Connie Dudgeon, Director of BCSO Budget and Finance
COL Charlie Jones, Chief Deputy