

Auditing the Sheriff Commissary

Texas Association of County Auditor's On The Road Training | Presented by:
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What is a Jail Commissary?

A jail commissary can be thought of as a specialized retail store selling selected items to a limited and exclusive clientele. The jail commissary is considered a specialized retail store because of its location – within a county jail. The proceeds generated from the commissary are intended and should only to be used for the benefit of the inmate.



What the Jail Commissary is Not:

- ❑ The Inmate Banking Department is not part of the jail commissary
- ❑ The jail food service provider is not part of the commissary (unless contracted to do so)
 - The commissary vendor typically has exclusive rights to sell commissary items
 - Proceeds from commissary sales are for the benefit of the inmate; however, non commissary sales/revenue should be deposited to the county's general fund
- ❑ Telephone services are not part of the commissary
 - Therefore, proceeds from pay telephones in county jails are not governed by section 351.0415 of the Local Government Code (LGC). Any proceeds the sheriff receives should be paid to the county treasurer. (Op. Tex.Att'y Gen. No. DM-19 (1981).)

Responsibility, Authority & Oversight

- ❑ Local Government Code 351 – establishes the duties of a sheriff for operating a jail and provides statutory requirements for auditing the commissary.
- ❑ Government Code Chapter 511 – Defines the role and responsibilities of the Commission on Jail Standards.
- ❑ Texas Administrative Code Title 37 Public Safety and Corrections Part 9 Texas Commission on Jail Standards – covers minimum jail standards.

Responsibility, **Authority** & Oversight, Cont.

Local Government Codes Authorizing the County Auditor to Review County Finances:

- 115.001 – Examination of records
- 115.002 – Examination of books and reports
- 115.0035 – Examination of funds collected by county entity or the district
- 115.901 – Examination of certain records by county auditor or county treasurer

Responsibility, **Authority** & Oversight, Cont.

Authority to Audit

LGC 351.0415 (d) – Clearly provides the County Auditor with the authority to audit:

- Fully examine the commissary accounts,
- Without advance notice,
- At least once a year (more often if commissioners court desires),
- Verify the correctness of the accounts, and
- Report the findings to the court.

Responsibility, **Authority** & Oversight, Cont.

What about Private Vendors or Operators?

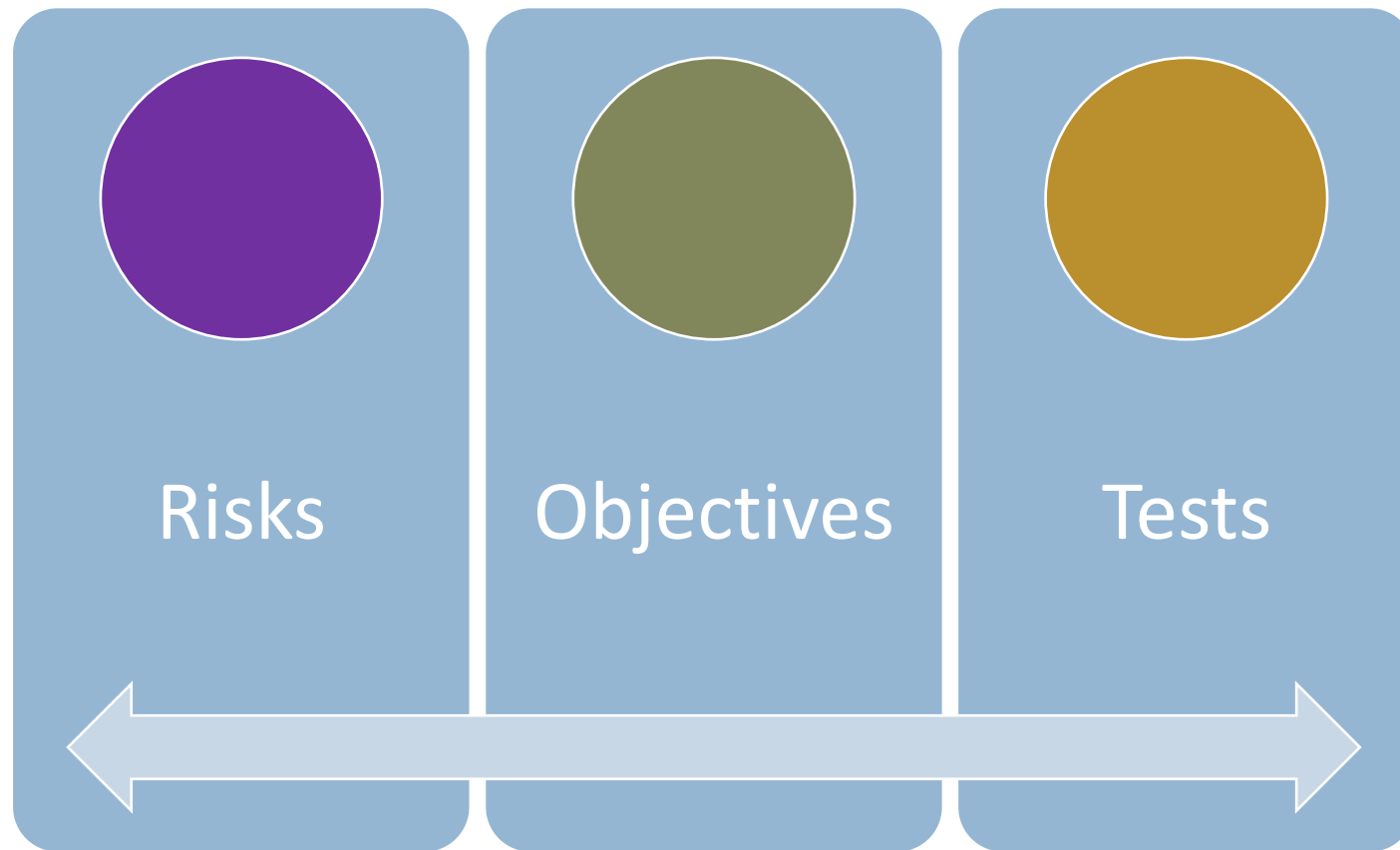
- Local Government Code 351.0415 (a)– Requires a private vendor operating the commissary to have an independent auditor examine the accounts annually.
 - Attorney General Opinion DM-67 Dec. 11, 1991 ratifies the LGC... “The county auditor cannot be denied access to such records, even if they are actually maintained by the commissary operator”.

Responsibility, Authority & Oversight, Cont.

The Texas Commission on Jail Standards (TCJS) is Responsible for Oversight

- Requires the county auditor to submit the annual commissary report
 - Provide for yearly audits by the county auditor in accordance with the Local Government Code, §351.0415. The audits shall be submitted to the commission not later than ten days following completion; and
- Requires the sheriff or jail administrator to provide a commissary plan
 - Commission Rule 291.3 - A plan providing for commissary privileges is required.
 - The plan must include:
 - Whether services are provided in-house or through a vendor
 - When commissary services are available, and
 - Procedures for getting the commissary item
- Performs annual jail inspections (announced or unannounced)
- Issues a report to your county

Piecing the Audit



Commissary Risk Assessment

Risks to Consider

- Large Revenues - Bexar County Jail Commissary generates over \$4 million in gross sales a year
- The sheriff has exclusive control of the commissary funds
- The sheriff can make purchases from the commissary account w/o the approval of the county purchasing agent
- Purchases are exempt from the competitive bidding statutes
- The Sheriff may enter into a contract without the approval of commissioners court
 - Quote from **Opinion No. DM-67:...** “The legislature has given the sheriff express authority to enter into a contract for the operation of a jail commissary. The commissioners court has no authority to control the sheriff's exercise of discretion in this regard. See generally Attorney General Opinions JM-1121 (1989); MW-439 (1982); H-1190 (1978)”.

Building the Audit Program

Achieve your specific objectives through **testing**

- ❑ Determine if the Commissary is compliant with federal, state and local laws and administrative rules (Statutory Compliance) by:
 - Reviewing the Commissary Plan required by TCJS to ensure it is updated and practiced (Specific Obj.)
 - An Annual Commissary Plan is required under the Tex. Administrative Code Title 37 Part 9 Chapter 291 Rule §291.3. The Plan must contain the following:
 - Indicate type of services, in-house or vendor; **Objective:** Determine compliance with the vendor contract; **Test:** Review Contract
 - Indicate frequency of services; **Objective:** Ensure adherence to the Commissary Plan; **Test:** inmate trust account debits on specific dates
 - Provide procedures for inmates obtaining items **Provides a clue to the type of source document you can request (order form)**
 - Provide that all expenditures from commissary proceeds be made in accordance with the Local Government Code, §351.0415.
 - **Test Expenditures**

Building your Audit Program, Cont.

➤ Test Expenditures

LGC 351.0415 (c) The Sheriff or the Sheriff's designee may use commissary proceeds only to:

- Fund, staff, and equip a program addressing the social needs of the inmates, including an educational or recreational program and religious or rehabilitative counseling;
- Supply inmates with clothing, writing materials and hygiene supplies;
- Establish, staff, and equip the commissary operation and fund the salaries of staff responsible for managing the inmates' commissary accounts;
- Fund, staff, and equip both an educational and a law library for the educational use of inmates:
or
- Fund physical plant improvements, technology, equipment, programs services, and activities that provide for the well-being, health, safety, and security of the inmates and the facility.

✓ **Is it for the benefit of the inmate?**

✓ **If you did not have Commissary funding would this expenditure have been made out of the general fund?**



Building your Audit Program, Cont.

- ❑ Determine compliance with the vendor contract (Objective)
 - Analyze contracts and determine adherence to contract obligations (Risk)
 - Recalculate commissary sales and commissions (Test) to ensure the commissary is receiving all commissions according to the vendor contract.
 - Pricing Reasonableness Testing- Review transactions that occurred during price-changing periods to ensure inmates are charged correct prices based on the approved menu pricing. (Analyze the costs of goods in the commissary vs. your local supermarket or convenience store)
 - Examine deliveries, order limits, and dollar amount thresholds for correctness.
 - Determine if commissary restrictions effectively prohibit inmates from ordering and receiving commissary.
- ❑ Review inmate accounts to ensure the distribution was authorized by the inmate and received the goods purchased
 - Analyze Inmate grievances to determine any ongoing issues
- ❑ Assets are safeguarded and maintained separately from other County Assets
 - Test Inventory
 - Maintains separate inventory listing of assets
 - Assets placed in services are only used for the benefit of the inmates.

Tips and Lessons Learned

- Test the information systems used by the Vendors
- Recalculate Tax and Commissions
- Review Grievances

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Thank You and God Bless!