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FILE NO. S-1202

CRIMINAL LAW & PROCEDURE:  
Questions Pertaining to  
Prisoners Doing Work While  
Incarcerated in County Jails

Honorable Frank X. Yackley  
State's Attorney  
LaSalle County  
Ottawa, Illinois 61350

Dear Mr. Yackley:

This responds to your letter requesting an opinion as to whether LaSalle County could provide payment for the work done by prisoners incarcerated in the county jail. If the answer to your question is that it can, you ask whether these prisoners should be treated as other county employees with Social Security deductions, withholding tax, and because of such payments, have the benefits that a normal county

Honorable Frank X. Yackley - 2.

employee would have. You ask further if the counties would become liable through the actions of the prisoners while being compensated in a suit against the county.

LaSalle County is a non-home rule unit of local government and, as a result, its powers are limited by section 7 of article VII of the Illinois Constitution of 1970 to those granted it by law. You note in your letter that under section 3-12-5 of the Unified Code of Corrections (Ill. Rev. Stat. 1975, ch. 38, par. 1003-12-5) persons performing work assigned them by the Department of Corrections may receive wages or good conduct credit or both. As you point out, however, this provision obviously refers to State prisoners and not to individuals confined in county jails.

It is my opinion that the county cannot provide for payment for the work done by prisoners incarcerated in the county jail. Since the Constitution has limited a non-home rule county's power to those "granted it by law", if there are no statutes which would authorize compensation of prisoners then the prisoners cannot be compensated. The General Assembly has not granted a county the power to pay

Honorable Frank X. Yackley - 3.

a jail inmate for services, although it has expressly granted permission to the Department of Corrections to pay State prisoners for their services under section 3-12-5 of the Unified Code of Corrections (Ill. Rev. Stat. 1975, ch. 38, par. 1003-12-5). Under the doctrine of "inclusive unius exclusio altera" the absence of permitting words as to county prisoners would indicate the county does not have the power to provide for payments. Since I have answered your first question in the negative, there is no need to answer your other questions.

This opinion only addresses the question with respect to paying prisoners for work assigned to or made available to them because they are prisoners. It is not concerned with situations where a prisoner may also be a regular county employee which may occur under article 7 of the Unified Code of Corrections (Ill. Rev. Stat. 1975, ch. 38, pars. 1005-7-1 et seq.) which deals with the sentence of periodic imprisonment.

Very truly yours,

A T T O R N E Y   G E N E R A L