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November 13, 2015

ESTABLISHED 1911

D. LOGAN GIFFIN  
(1890-1980)

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(1892-1966)

C. TERRY LINDNER  
(1903-1987)

ALFRED F. NEWKIRK  
(1904-1980)

JAMES M. WINNING  
(1921-2013)

Mr. Michael McCreery  
United Counties Council of Illinois  
217 East Monroe Street, Suite 101  
Springfield, IL 62701

Re: **County Contract with Private Entity to Operate County Jail**  
**Our File: UNITCC-0601**

Dear Mike:

## Issue

May a county contract with a private entity to operate the county jail?

## Analysis

The Illinois' Counties Code specifically requires that the Sheriff shall have control over the custody and care of the county courthouse and jail.<sup>1</sup> The County Jail Act more specifically addresses the duties of the Sheriff with respect to the county jail.<sup>2</sup> The Sheriff is to be the warden of the county jail and have custody of the prisoners in the jail.<sup>3</sup> The Sheriff may appoint a superintendent of the county jail and shall be responsible for the hiring and training of all personnel necessary to operate and maintain the jail.<sup>4</sup>

The Illinois Appellate Court for the Third District has held that a county may not lease county property for private purposes.<sup>5</sup> In *Yakley*, the court looked at whether the county could lease an unused portion of the courthouse to a private party.<sup>6</sup> The court reasoned that because the county was simply a subdivision of the state and was wholly public in its character, then the property of the county belongs

<sup>1</sup> 55 ILCS 5/3-6017.

<sup>2</sup> 730 ILCS 125/1 et seq.

<sup>3</sup> 730 ILCS 125/2.

<sup>4</sup> 730 ILCS 125/3.

<sup>5</sup> *Yakley v. Johnson*, 295 Ill. App. 77 (3rd Dist. 1938).

<sup>6</sup> *Id.*

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United Counties Council of Illinois  
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to the public and is simply vested with the county as an agent.<sup>7</sup> The court said that because the purpose of the jail and courthouse were public and used in the performance of public functions, the county was not authorized to go into private business and county owned property was to remain public unless otherwise provided for by statute.<sup>8</sup>

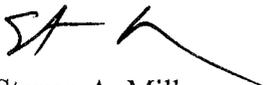
**Conclusion**

A county may not contract with a private entity to operate the county jail. Illinois law specifically vests the Sheriff with the control, custody, and management of the county jail and this duty may not be contracted away. Further, Illinois courts have said that a county may not lease space in public buildings for private purposes.

Sincerely,

GIFFIN, WINNING, COHEN & BODEWES, P.C.

  
Herman G. Bodewes

  
Steven A. Milburn

HGB:SAM/tem

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**Disclaimer:** This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*