



GEORGE BUTLER, JR.  
County Attorney

280 North College, Suite 501  
Fayetteville, AR 72701

WASHINGTON COUNTY, ARKANSAS  
County Courthouse

MEMORANDUM

DATE: November 17, 2011

TO: Marilyn Edwards, County Judge  
Tim Helder, Sheriff

FROM: George E. Butler Jr., County Attorney

RE: Working of Jail Inmates for Non-Profits

ACA 12-42-101 et seq states that "county convicts" (inmates) may only be "worked" by the Sheriff or the County Court on projects or property that are owned operated or conducted by the State of Arkansas, or any county, city, or town.

In reading through this very old statutory scheme it is clear that this applies to "forced" labor for public work. However it appears to me that a credible argument can be made that if an inmate "volunteers" to perform work for a non-profit that the statutes would not be violated.

Inmates should be given the option of volunteering to work for non-profits and if they choose not to, they should not be penalized in any way and must be given the option to perform public work.

It should be noted that state law allows the Department of Corrections to work inmates for non-profits ACA12-30-405 and ACA 12-42-107 can be construed to allow forced work for non-profits if it is of benefit to the county. Therefore, there appears to be no clear public policy prohibiting work for non-profits by inmates.

Also of note, is ACA12-41-503 a much more recent statute than the above referred to statutory scheme which provides that the Sheriff, in managing the population of the jail may allow an inmate to serve his or her time on weekends or by any other lawful alternative that rehabilitates the inmate or benefits the county.

The jail clearly benefits from this program as it holds down the cost of incarceration and helps manage overcrowding issues. As I recall this was the original reason for the creation of the program. Furthermore, the inmates are required to pay to participate in the program. The fee charge was originally designed to cover the cost of the program.

In Ark Atty Gen No 2003-190, the Attorney General stated that allowing offenders to voluntarily work off fines by performing community service for non-profits or for profit businesses would not be a violation of Article 12 Section 5 of the Constitution which prohibits the appropriation or obtaining of money for corporations or individuals.

Therefore, it is my opinion that inmates may continue to work for non-profits in line with the parameters set forth above.