



ALABAMA APPLESEED
CENTER for LAW & JUSTICE



THE
AMERICAN
CONSERVATIVE
UNION
FOUNDATION



October 16, 2018

The Honorable Jay E. Town
United States Attorney for the Northern District of Alabama
1801 4th Avenue North
Birmingham, Alabama 35203

The Honorable Louis V. Franklin, Sr.
United States Attorney for the Middle District of Alabama
131 Clayton Street
Montgomery, Alabama 36104

The Honorable Richard W. Moore
United States Attorney for the Southern District of Alabama
63 South Royal Street, Suite 600
Mobile, Alabama 36602

Re: Misappropriation of Jail Food Funds by Alabama Sheriffs with Federal Detention Contracts

Dear Mr. Town, Mr. Franklin, and Mr. Moore:

We write to apprise you of our concern that several sheriffs across the State of Alabama who house federal detainees in the jails they oversee may be engaging in financial misconduct. Based on their erroneous contention that Alabama state law authorizes them to personally profit from unspent jail food funds appropriated by the state legislature,¹ some of these sheriffs have

¹ The sheriffs mistakenly rely on Alabama Code § 36-22-17, which states that “the various sheriffs of the various counties shall be entitled to keep and retain . . . allowances and amounts received for feeding prisoners,” as opposed to paying them into their counties’ general funds. They assert that this provision allows them to convert state and, in some cases, federal food funds to personal use. *See, e.g., Eric Fleischauer, Comptroller: Sheriffs must promise not to pocket inmate-food money, or state won’t pay*, DECATUR DAILY, August 17, 2018 (reporting that Bobby Timmons, chairman of the Alabama Sheriffs Association, takes the position that state law “allows sheriffs to personally receive any leftover inmate-food money as a supplement to their salaries”), http://www.decaturdaily.com/news/other_news/state_capital/comptroller-sheriffs-must-promise-not-to-pocket-inmate-food-money/article_c6271ba2-bbd2-5195-9681-06058768618d.html.

Since at least 2011, it has been clear that this position is incorrect. *See Ala. Op. Att’y Gen.* 2011-053 (April 20, 2011), at 4 (determining that “any surplus in the sheriff’s food service allowance should be retained by the sheriff’s office,” rather than the sheriff individually, and that “neither the sheriff nor the county may use the surplus for any purpose other than future

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converted to their personal use large sums--hundreds of thousands of dollars per year--of money provided for feeding prisoners. In certain cases, it seems that they have taken food funds received pursuant to federal detention contracts.

We understand that one such sheriff, Todd Entrekin, whose case has recently garnered considerable media attention, may have recently come under investigation by the Department of Homeland Security's Office of the Inspector General.² The problem, however, appears to extend well beyond Etowah County.

According to the most recent publicly available information from the Office of the Federal Detention Trustee, prisoners under the custodial jurisdiction of the United States Marshals Service are held in at least 17 different county facilities in Alabama.³ In response to open records requests sent last year by the Southern Center for Human Rights, some of the relevant sheriffs represented that they do not take jail food funds for personal use.⁴ Ten of them,

expenses in feeding prisoners"); *see also* Memorandum from Governor's Office of General Counsel (July 10, 2018), at 2-4 (concluding that this statute "does not . . . operate[] to convert public funds--funds which are designated by statute for the feeding of prisoners--into personal income for sheriffs"; explaining that "treating the food service allowance as personal income is both unreasonable and unsupported by the law," because "the 'keep and retain' language of section 36-22-17 must be interpreted in light of the statutory purpose for which the food service allowance was created--the feeding of prisoners"; observing that above-cited Attorney General's Opinion "is the currently operative guidance").

² Connor Sheets, *'Beach House Sheriff' under federal, state investigation over jail food money*, AL.COM, July 17, 2018, https://www.al.com/news/index.ssf/2018/07/beach_house_sheriff_under_fede.html.

³ Office of the Federal Detention Trustee, *Location of Prisoners Held*, <https://www.justice.gov/archive/ofdt/prisoner-location.htm#alabama>. In 2011, the following counties in Alabama were listed as having federal detention contracts: Autauga County, Baldwin County, Cherokee County, Covington County, Cullman County, Elmore County, Escambia County, Jefferson County, Lee County, Mobile County, Monroe County, Montgomery County, Morgan County, Perry County, Shelby County, and Walker County. At least two counties not reflected on this list, Dekalb County and Etowah County, currently have federal detention contracts; these contracts have been in effect since well before 2011. Although both house Immigration and Customs Enforcement detainees, these detainees are held pursuant to riders to contracts with the United States Marshals Service.

⁴ Of the above-listed counties, the sheriffs of the following have represented to the Southern Center for Human Rights that they have not retained or are prohibited by local law or regulation from retaining any jail food funds: Cherokee County, Dekalb County, Jefferson County, Mobile

however, made no such representation.⁵ Nearly all of these ten sheriffs have refused to comply with repeated requests for public records that would reveal whether, and if so by how much, they had profited by personally retaining state and/or federal funds.⁶ This lack of transparency serves to illustrate the importance of a federal investigation into the sheriffs' misuse of public funds.

The Southern Center for Human Rights has obtained documents demonstrating that at least three of these ten sheriffs have converted substantial sums of jail food money--between them, over a million dollars--to personal use in the past few years. In Etowah County, Sheriff Entrekin recently admitted to taking over \$750,000 from the jail food account over the past three years, and released tax records confirming as much.⁷ In Morgan County, Sheriff Franklin withdrew approximately \$160,000 from the jail food account.⁸ Sheriff Tate of Monroe County produced records showing that from the beginning of 2014 to the end of 2016, he had "declared excess and paid to" himself a total of \$110,459.77 from the jail food account.

There is reason to believe that sheriffs with federal contracts have been able to reap especially rich rewards from jail food accounts--and, accordingly, that some of the money they have taken may have come from the federal government. In Monroe County, for example, the per capita reimbursement rate for federal prisoners is \$10 per day, over five times higher than the per capita rate for state prisoners of \$1.80 per day. Records reflect that in 2016, Sheriff Tate's office received a total of \$26,710.80 in food funds from the State of Alabama, \$5,505.00 in food funds from municipal contracts, and \$108,620.00 in food funds from the federal detention contract. On

County, Montgomery County, Perry County, Shelby County, and Walker County. We would be glad to provide you with these communications.

⁵ Assuming the above-described representations are accurate, this leaves ten sheriffs of concern: those in Autauga County, Baldwin County, Covington County, Cullman County, Elmore County, Escambia County, Etowah County, Lee County, Monroe County, and Morgan County.

⁶ Sheriff Tate of Monroe County did produce records showing how much jail food money he had converted to personal use. No request was made of Sheriff Franklin of Morgan County, because the Southern Center for Human Rights had already obtained records showing how much jail food money she had converted to personal use.

⁷ Connor Sheets, *Beach house sheriff defends inmate-feeding practices, slams 'fake news,'* AL.COM, March 23, 2018, https://www.al.com/news/birmingham/index.ssf/2018/03/beach_house_sheriff_defends_in.html.

⁸ Sheriff Franklin, who later returned the money in question, was held in contempt of federal court for withdrawing it from the jail food account in violation of an express injunction. See Order (Doc. 169), *Maynor, et al. v. Morgan County, Alabama, et al.*, 5:01-CV-851-AKK (N.D. Ala. June 15, 2017).

December 30 of that year, he “declared excess and paid to” himself \$44,402.77--over \$12,000 more than the *total* amount he had received from state and municipal sources *combined*.⁹

The actions of these sheriffs affect more than just the Treasury. When limited food funds are misappropriated by sheriffs, they put in jeopardy the health and safety of the prisoners those funds were provided to feed. For example, recent coverage of food at the Etowah County Detention Center reports that inmates are frequently served meat with a “dull grayish pallor” packaged in wrapping “[e]mblazoned in big red letters [with] the words ‘Not Fit For Human Consumption,’” or “rotten, donated chicken,” including pieces that have been “culled because of tumors and abscesses and deformities.”¹⁰

Their actions also appear to violate federal law. In particular, they likely constitute crimes under 18 U.S.C. § 666, which penalizes an agent of a state or local government or agency receiving more than \$10,000 per year from a federal contract who “embezzles, steals, obtains by fraud, or otherwise without authority knowingly converts to the use of any person other than the rightful owner or intentionally misapplies” property of the state or local government or agency valued at \$5,000 or more. These sheriffs’ actions also likely violate federal contracting law, such as the provision in the Intergovernmental Service Agreement with Etowah County which prohibits officials or employees of the recipient county from “participat[ing] personally” in performance of a contract in which he or she “has a financial interest,” and from “[u]sing his or her official position for private gain.”¹¹ Their submissions of requests for payment under the contract may constitute false claims in violation of 31 U.S.C. § 3729.¹²

⁹ Similarly, records produced by Sheriff Entrekin of Etowah County show that in 2016--a year in which he admitted on a financial disclosure form that he had taken “[m]ore than \$250,000” in “compensation” from “Food Provisions”--his office received a total of approximately \$262,000 in food funds from the State of Alabama. That same year, his office received approximately \$420,000 in food funds from the federal government, as well as approximately \$36,000 from various municipalities.

¹⁰ Connor Sheets, *Jail kitchen workers say donated, spoiled food keeps costs low for ‘Beach House Sheriff,’* AL.COM, April 23, 2018 (describing inadequate sustenance for inmates without financial resources to buy commissary food, advance notice of health inspections, and “suicide attempts in response to the dire feeding problems”), https://www.al.com/news/birmingham/index.ssf/2018/04/jail_kitchen_workers_say_donat.html.

¹¹ This language appears in Article XIV (“Conflict of Interest”) of the IGSA.

¹² See *Universal Health Services, Inc. v. United States ex rel. Escobar*, 136 S. Ct. 348 (2016) (endorsing implied false certification theory of liability under False Claims Act).

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Sheriffs with federal detention contracts who pocket money provided for feeding prisoners have abused the trust of the taxpayers--both in Alabama and across America--out of whose paychecks these dollars came. These actions also offend the conscience of all who believe that incarcerated people are to be safeguarded with dignity, not exploited for profit.

We respectfully urge you to investigate and, as appropriate, prosecute sheriffs with federal detention contracts who have converted jail food funds to their personal use. If we can assist you in conducting these investigations, by providing documents we have obtained or otherwise, please do not hesitate to contact us.

Sincerely,



Aaron Littman
Staff Attorney
Southern Center for Human Rights



Frank Knaack
Executive Director
Alabama Appleeed Center for Law and Justice¹³



Jessica Vosburgh
Executive Director
Adelante Alabama Worker Center



David Safavian
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¹³ Susan Doss, Christine Freeman, Frank McPhillips, Joyce White Vance, and Scott Williams are members of the board of Alabama Appleeed, but have removed themselves from any participation in this request.

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cc:

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