



December 17, 2015

Kathleen Howard  
Executive Director, BSCC  
2590 Venture Oaks Way, Suite 200  
Sacramento CA 95833

**RE: Butte County's Conditional SB 863 Award**

Dear Ms. Howard:

I write in response to your letter dated November 23, 2015, regarding the Board of State and Community Correction's (BSCC) conditional approval of Butte County's jail construction project in accordance with Senate Bill (SB) 863. Pursuant to the Board's desire to further explore the legality of using monies from the Inmate Welfare Fund as part of Butte County's required match, I am providing an opinion letter from Butte County Counsel, as you requested. Upon review of the letter you will see that our proposed use of the monies is squarely within the bounds of the law.

Turning now to the Board's directive that Butte County be encouraged to find an alternative source of funds, notwithstanding the legality of such a use, I provide the following response.

During the preparation of our SB 863 proposal, our finance team met numerous times to put together the most appropriate funding structure. Taking into consideration all allowable and unrestricted funding, the plan we developed represents the most appropriate and balanced use of monies.

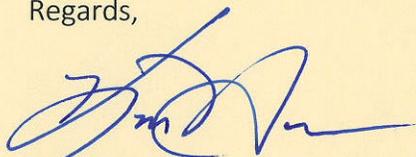
The \$685,000 in question was intended to aid in the construction of six fully furnished and equipped classrooms which would be used to provide educational and evidenced based programs designed to reduce recidivism. The projected construction cost of those class rooms is over \$2.3 million dollars. Accordingly, the use of \$685,000 from the Inmate Welfare Fund, would have only covered a fraction of the cost of the space being constructed specifically for the "benefit, education, and welfare" of the inmates pursuant to Penal Code section 4025(e).

After restricted and set-aside funding was identified, there remained a gap of \$685,000. Butte County's local revenues are limited, resulting in our general purpose revenue being used overwhelmingly for public safety services, with the remaining balance used predominantly for the public library system. Accordingly, it was necessary to find an appropriate source of funding that would not cut into general purpose revenue and thereby jeopardize other critical programs. Using monies from the Inmate Welfare Fund was the most appropriate funding source, given the nature of this project.

While I continue to believe that the Inmate Welfare Fund is the most appropriate source of funding for the educational components of the project, I also recognize the possibility that using the funds will result in delay and obstruction of this much-needed project. Frankly, we do not have time for delay and obstruction, as we need to move forward with a project that includes space which will allow us to provide meaningful programs to our inmates and prepare them for a more successful reintegration back into society.

Accordingly, in the interest of moving the project forward I will be recommending to the Butte County Board of Supervisors that we remove the entire \$685,000 of Inmate Welfare Funds from the project and instead use Local Assistance for Rural and Small County Law Enforcement Funds pursuant to Government Code §30070 et. seq. This will of course limit our ability to fund other important public safety related projects and initiatives, but I trust it will remove any objection to our moving forward with Butte County's Jail Program, Inmate Treatment, Capacity and Replacement Housing Project. I will advise you of the action of the Board of Supervisors.

Regards,



Kory L. Honea  
Sheriff-Coroner

COUNTY COUNSEL  
BRUCE S. ALPERT

ASSISTANT COUNTY COUNSEL  
BRAD J. STEPHENS



CHIEF DEPUTY COUNTY COUNSEL  
FELIX WANNENMACHER  
KATHLEEN KEHOE GREESON

DEPUTY COUNTY COUNSEL  
ROGER S. WILSON  
VIRGINIA L. GINGERY

OFFICE OF THE COUNTY COUNSEL  
COUNTY OF BUTTE  
25 COUNTY CENTER DRIVE, SUITE 210  
OROVILLE, CALIFORNIA 95965  
PHONE: (530) 538-7621 FAX: (530) 538-6891

December 16, 2015

Kathleen Howard  
Executive Director, BSCC  
2590 Venture Oaks Way, Suite 200  
Sacramento, CA 95833

Dear Ms. Howard:

Your letter to Butte County Sheriff Kory Honea dated November 23, 2015, regarding the Board of State and Community Correction's (BSCC) conditional approval of Butte County's jail construction project under Senate Bill 863, was provided to this office as requested for review and response. Specifically, BSCC requested that this office provide a written opinion on the proposed use of the Inmate Welfare Fund for a portion of the County's matching funds and, if legal, encourage the County to find an alternative source of funds.

In short, it is this office's opinion that the Inmate Welfare Fund may be used as proposed for a portion of the County's matching funds for the County's jail construction project based upon the clear language in Penal Code section 4025(e) which states:

“(e) The money and property deposited in the inmate welfare fund shall be expended by the sheriff *primarily* for the benefit, education, and welfare of the inmates confined within the jail. Any funds that are not needed for the welfare of the inmates may be expended for the maintenance of county jail facilities. Maintenance of county jail facilities may include, but is not limited to, the salary and benefits of personnel used in the programs to benefit the inmates, including, but not limited to, education, drug and alcohol treatment, welfare, library, accounting, and other programs *deemed appropriate by the sheriff*. Inmate welfare funds shall not be used to pay required county expenses of confining inmates in a local detention system, such as meals, clothing, housing, or medical services or expenses, except that inmate welfare funds may be used to augment those required county expenses *as determined by the*

*sheriff* to be in the best interests of inmates . . .” (Emphasis added.)

The above language grants broad discretion to the Butte County Sheriff over the Inmate Welfare Fund in several respects. First, Penal Code section 4025(e) states that the Inmate Welfare Fund shall be used “primarily” for the benefit, education, and welfare of inmates. Prior to 1993, however, this section included the word “solely” which placed strict limitation on the use of such funds. Replacing the word “solely” with the word “primarily” provides greater potential uses of inmate welfare funds beyond the “benefit, education, and welfare” of the inmates given the plain meaning of these two words. It is presumed that the Legislature intended to provide greater flexibility in the use of inmate welfare funds given this amendment.

Second, Penal Code section 4025(e) grants the Sheriff broad discretion over inmate welfare funds because it states that a Sheriff may use such funds for the maintenance of jail facilities. The term “maintenance” is broadly defined as including, but not limited to, “education, drug and alcohol treatment, welfare, library, accounting and other programs” and encompasses all programs that “benefit the inmates.” This list is not exhaustive and supports the conclusion that the Legislature did not intend to limit a sheriff’s discretion over the use of such funds.

Third, what constitutes “maintenance” of jail facilities is left to the discretion of a sheriff: “Maintenance of county jail facilities may include . . . and other programs *deemed appropriate by the sheriff.*” (Emphasis added.) Again, had the Legislature intended to reduce or eliminate a sheriff’s discretion over such funds it could have done so, but the above language grants broad discretion to sheriffs over what constitutes the “maintenance” of jail facilities with respect to the use of inmate welfare funds.

Fourth, Penal Code section 4025(e) limits the use of inmate welfare funds for certain county expenses but grants a general exception to a sheriff to “augment” required county expenses “as determined by the sheriff.” Significantly, a sheriff’s ability to “augment” county expenses refers to “meals, clothing, housing, or medical services or expenses” which covers a broad range of jail operations. More importantly, the determination as to whether the general exception applies, and therefore whether inmate welfare funds may be used to “augment” required county expenses, is left to the determination of a sheriff. As above, the language of this sentence is expansive and deferential rather than limiting and restrictive.

Finally, we are unaware of any case law interpreting Penal Code section 4025(e) and, absent any case law to the contrary, the clear language of the section governs the Sheriff’s discretion to use inmate welfare funds.

Butte County’s proposed jail construction project calls for the construction of six fully furnished and equipped classrooms which will be used to provide educational and evidence-based programs designed to reduce recidivism. The projected construction costs of the classrooms is over \$2.3 million. As you can see, the use of \$685,000 from the Inmate Welfare Fund would only cover a fraction of the cost for the space being constructed specifically for the “benefit, education, and welfare” of the inmates pursuant to Penal Code section 4025(e). Regardless, such

funds may also be used for the maintenance of jail facilities and to augment required County expenses that benefit inmates such as the provision of education and medical services, all at the Sheriff's discretion. Mental, medical, educational, and programming facilities all meet these definitions and are all in the best interests of the inmates.

Very truly yours,

BRUCE S. ALPERT  
Butte County Counsel

By:   
\_\_\_\_\_  
Roger S. Wilson  
Deputy County Counsel

cc: Chief Administrative Officer  
Butte County Sheriff