

MEMORANDUM

TO: Chairman Daniel L. Stewart

FROM: Brian M. Callahan

RE: Use of kiosks to accept inmate account deposits

DATE: February 11, 2008

Recently, the Office of Counsel has encountered, through inmate grievances and inquiries from facility administrators, a novel issue concerning inmate institutional accounts. Specifically, it appears that several county correctional facilities have contracted for the use of an electronic “kiosk.” Operating similarly to an automated teller machine (ATM), the sole function of such kiosk is to accept deposits into a specified inmate’s institutional account, a portion of which is often deducted to satisfy a “service fee” paid to the machine’s owner and operator. The following opinion addresses the propriety of using such kiosks to collect deposits into inmate institutional accounts.

In 2001, Correction Law section 500-c and other statutes were amended to enhance New York State’s “Son of Sam Law” (L.2001, c.62). Taken as a whole, such statutes allow a crime victim to seek legal redress from a convicted perpetrator and, upon successful conclusion, allow the victim to access money and property obtained by the criminal from any source. With specific regard to Correction Law §500-c, a new subdivision (7) was added to require a sheriff (or commissioner) to maintain an institutional fund account on behalf of every prisoner and “for the benefit of the person make deposits into said accounts of any prisoner funds.”

Correction Law §500-c(7) goes on to define “prisoner funds” as funds in the prisoner’s possession upon admission, an inmate’s earnings while incarcerated, or “any other funds received by or on behalf of the prisoner and deposited with such sheriff or municipal official.” When funds are deposited using a kiosk, it seems evident that such funds are “received ... on behalf of the prisoner and deposited with such sheriff or municipal official.” Thus constituting “prisoner funds” as defined in Correction Law §500-c(7), it is the opinion of Counsel’s Office that the statute requires the entire amount to be deposited into the inmate’s institutional account, and the deduction of any sum to satisfy a service fee would violate such obligation.

That is not to say, however, that a county correctional facility could not lawfully use electronic kiosks as a means of allowing the public to make deposits into an inmate's institutional accounts. Any contractual fees paid to the kiosk's owner or operator may properly be considered an "operating expense" to be paid from a jail commissary's operating account, similar to other necessary expenditures such as supplies, computers and personnel used exclusively to run such commissary. Assuming that the commissary operation remains self-supporting and provides a modest return above costs, as required by 9 NYCRR §7016.1(b), it is the opinion of Counsel's Office that such an arrangement would not violate Correction Law §500-c, nor any other relevant statute.

It should be noted that nothing in the Commission's *Minimum Standards and Regulations for Management of County jails and Penitentiaries* requires a county correctional facility to employ the use of such an electronic kiosk, nor even accept funds from members of the public visiting the jail. Further, should a county elect to provide an electronic kiosk, it does not dispense the facility regulatory obligation to make deposits into an inmate's institutional account of all funds confiscated upon admission [9 NYCRR §7002.4(f)], contained in incoming correspondence [9 NYCRR §7004.6(b)(4)] or included in an incoming prisoner package [9 NYCRR §7025.4(c)].