Nassau County
Office of the Comptroller
Field Audit Bureau

Nassau County Correctional Center Commissary Operations:

Follow-up to Audit Report of September 8, 2000

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MA03-04

June 21, 2004

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Executive Summary

Background

The Nassau County Correctional Center ("Correctional Center") maintains a commissary where prisoners may purchase hygiene articles and supplies, writing materials, snack foods, etc. In accordance with the State Commission of Correction's minimum standards, 9 NYCCR Part 7016.1 (b), the prices of items offered for sale are fixed by the Sheriff. The Sheriff can set prices to allow the commissary to be self-supporting, but prices can only provide a modest return above costs. Commissary profits may only be used for purposes of prisoner welfare and rehabilitation.

In June 2000, the Comptroller's Office conducted an audit of the commissary operations for the years 1997 to 1999. The office examined whether the commissary was self-supporting, and whether any profits were only a "modest return above costs." In the audit report issued September 8, 2000, the Comptroller found that, while financial statements for commissary operations showed an annual profit of approximately $154,000, the commissary was actually incurring substantial losses of about $345,000 annually. This occurred because the correctional center deliberately excluded about $500,000 per year in personnel costs from the cost of operations. Consequently, during the period studied, the Correctional Center used an estimated $1 million to $1.1 million of unearned commissary "profits" to fund inmate welfare and rehabilitation programs. Because the commissary did not support these programs, they should have been budgeted through the normal budget process.

The 2000 report recommended privatizing the commissary in order to achieve the following benefits:

- Annual savings of as much as $500,000 in personnel costs;
- Annual overtime cost reductions of about $170,000, by allowing better deployment of correction officers in performing their regular duties;
- Eliminating the county's loss from damaged goods and the risk of theft and pilferage by having the contractor purchase and own all product inventories;
- An increased financial return to the Correctional Center's inmate fund.

The audit also recommended that the Correctional Center stop making purchases for prisoner welfare from the commissary accounts until the commissary accounts reflected a profit after inclusion of personnel costs. In addition, recommendations were made to strengthen internal controls.

We conducted a follow up audit in September 2003 to determine if the Correctional Center had taken corrective action to address the deficiencies noted in our prior audit.

Scope, Objectives and Methodology

Auditors contacted the Sheriff's Department and requested an update on the department's plan, proposed in 2002, to privatize the commissary unit. In addition, we performed a cost analysis of the staffing utilized to perform this function and obtained Commissary

Profit and Loss statements for the years 2001 and 2002. (Year 2000 profit and loss statements were requested several times, but were not provided.)

This audit was conducted in accordance with generally accepted auditing standards. These standards require that the audit be planned and performed to obtain reasonable assurance that the audited information is free of material misstatements. An audit includes examining documents and other available evidence that would substantiate the accuracy of the information tested, including all relevant records and contracts. It includes testing for compliance with applicable laws and regulations, and any other auditing procedures necessary to complete the examination. We believe that the audit provides a reasonable basis for the audit findings and recommendations.

Summary of Significant Findings

The Correctional Center has not privatized the commissary, as recommended in the 2000 audit. It now has six Corrections Officers working full time in the commissary at an annual cost of approximately $550,000. This is a $50,000 increase in personnel costs from the previous audit, when there were five full time employees at an average annual cost of $500,000. The Correctional Center still does not consider personnel costs as a cost of commissary operations, nor, consequently, in determining the commissary's profits, which are to be used for inmate welfare and rehabilitation, even though it has been authorized since at least 1995 to do so by the New York State Commission of Correction.

As a result, profits resulting from commissary operations have been overstated; and the commissary is actually incurring considerable losses. We estimate that the Correctional Center erroneously calculated approximately $600,000 in commissary profits for the three-year period to be expended on inmate welfare.

Department's Response:

The matters covered in this report have been discussed with officials from the department during and at the conclusion of this audit. On April 22, 2004, we submitted a draft report to department officials with a request for comments. We received a written response from the department on May 7, 2004. The full text of the department's responses, and our comments on the responses, are included as an addendum to this report.

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Follow-up Audit Findings

Privatization

Audit Finding (1):

The Correctional Center's reply to the original audit report concluded that the commissary unit was a key component of overall operations and should continue to operate under the direct control and supervision of the Sheriff. Nevertheless, the Center did explore the privatization option. Representatives visited Westchester County's Correctional Center and reviewed its commissary operation late in 2002. However, the Correctional Center decided not to go forward with a Request for Proposals ("RFP") to operate the commissary. In an August 21, 2003 e-mail to the Comptroller's Office, a Correctional Center official wrote:

"The department determined after reviewing its study that the immediate savings that would result in privatizing this unit would be a savings of two officers with a maximum overtime savings of $150,000. The down side to this privatizing would be the security issue that would present itself by allowing vendor's employees into the facility as full time employees, the flexibility that the Sheriff currently has in operating the department's commissary, the decreased number of security staff to respond to department emergencies, and contractual issue regarding the contracting of union jobs."

We urge the Correctional Center to reconsider issuing a commissary privatization RFP. The Correctional Center concluded that privatization would save a maximum of $150,000 in overtime costs, but would create security and labor relations issues. We believe substantial savings could be achieved through privatization without creating security concerns and without reducing correction officer positions. The Westchester County Correctional Center assigns no corrections officers to its commissary. If the same management philosophy were applied in Nassau, all six officers in Nassau's facility could be better deployed in performing their normal duties, thereby resulting in additional personnel cost savings.

Westchester officials informed us that security has not been jeopardized by their use of an outside vendor for commissary operations. All employees of the outside firm undergo a security clearance and are responsible for bagging and sealing items for distribution. They deliver these items to the jail floors and the assigned unit officers distribute them. No correction officers are assigned to the commissary operations; they distribute the items as part of their regular assigned duties.

The Correctional Center's flexibility in operating the commissary, such as rewarding inmates with free goods, could be retained by incorporating these requirements into the RFP, or by paying for the free goods with the profits from privatization. The amount of free goods is not significant, approximately $3,000 to $4,000 per year.

The number of staff available to respond to departmental emergencies should not be reduced under privatization, nor do our recommendations call for reducing staff levels. Rather, officers would be redeployed and would still be available for emergencies.

The Correctional Center's response did not address our earlier finding that a contract with a private vendor, modeled after Westchester's, could provide the Center with a guaranteed fixed return. We were informed that Westchester receives approximately 30 percent of net profits generated by its contractor.

Our recommendations to privatize the Correctional Center's commissary were made more than three years ago. In our current examination of commissary operations we determined the Correctional Center's inaction has resulted in average annual losses of $315,000. In addition, the Center continues to exclude personnel costs from the Commissary Profit and Loss Statements, thereby overstating amounts available for investment in prisoner welfare and rehabilitation.

<u>Audit Recommendation:</u>

The Correctional Center should reconsider issuing an RFP to obtain the services of an outside contractor to operate the commissary. Privatization could create real profits to be used for the inmates' welfare, and would allow the Correctional Center to transfer correction officers currently working in the commissary back to security positions, thereby reducing the need for overtime. Privatization would also reduce the labor of other, non-commissary employees to supervise, purchase inventory, and maintain commissary accounting records.

Purchases from Commissary Profits

<u>Audit Finding (2):</u>

The State Commission of Correction's minimum standards, 9 NYCRR Part 7016, require that "the prices of any items offered for sale [in a local correctional facility commissary] shall be fixed by the sheriff, or official in charge, to the extent that the commissary operation will be self supporting and will provide a modest return above costs."[1] Our audit found that the commissary was not self-supporting and that the Correctional Center continues to exclude labor costs from its calculation of the commissary's operating results. After considering labor costs, we found that while the commissary was losing approximately $315,000 per year, the Correctional Center was spending approximately $200,000 per year on inmate welfare from funds that it attributed to commissary "earnings."

The "modest return above costs" is supposed to be a source of funds to be spent on inmate welfare. Our audit questioned the availability of these funds and recommended that the Correctional Center obtain county approval, through the budgetary process, before spending funds from the commissary account. The Correctional Center's audit response indicated that it did not consider labor costs as a cost of commissary operations.

<u>Audit Recommendation:</u>

We stand by this office's original recommendation. In its response to the previous audit, the Correctional Center noted that, in June 1995, the State Commission of Corrections had authorized local sheriffs to charge salaries and other operation costs to the commissary. Nevertheless, the Correctional Center failed to do so, thereby making the commissary look profitable and privatization less attractive. The Correctional Center should discontinue using the commissary account to make purchases for prisoner welfare and rehabilitation until the commissary operations reflect a profit *after inclusion of personnel costs*.

[1] 9 NYCRR § 7016.1(b)

Internal Controls

Audit Finding (3):

As part of our follow-up audit, we also inquired whether the Correctional Center had implemented any of the corrective actions aimed at strengthening internal controls, as recommended in the original audit report. They included:

- Establishing written procedures to cover the accounting and maintenance of bank accounts, cash disbursements, accounts payable and purchases. The State Commission of Correction's minimum standards address local correctional facility commissary operations, and require that the commissary account "be maintained in a manner which will fully substantiate all purchases, sales and expenditures;"[2]
- Requiring the "Damaged and Free Goods Forms" to be signed by the preparer and verified by a supervisor;
- Segregating the purchasing functions from the accounting functions.

The Correctional Center did not adequately address these control issues. Although it agreed to establish procedures as quickly as possible, three years have passed, and the recommended procedures have not been written. Additionally, the Correctional Center did not adequately address the review and approval process on the "Damaged and Free Goods Form." The response to the original report indicated that the Correctional Center was in the process of revising this form to require both line officers and supervisors to sign it. We are now told that the officers who work in the commissary forward the form to the accounting staff. The forwarding of a form does not fix accountability for properly stating the amount of damaged goods.

The Correctional Center did address the request for segregation of duties over the purchasing function, advising us that one staff member currently performs purchasing functions while another performs the majority of the accounting functions. However, because the unit consists of only two individuals, when one staff member is on a leave entitlement, the remaining staff member performs all functions.

Audit Recommendations:

To ensure adequate internal controls, the Correctional Center should establish written procedures covering the accounting and maintenance of bank accounts, cash disbursements, accounts payable and purchases.

[2] 9 NYCRR Part 7016.1(d)

Findings and Recommendations

The “Damaged and Free Goods Form” should be revised to require both line officers and supervisors to sign it. The preparer should sign the form, and a supervisor’s signature should indicate that verification has been performed.

Our auditors agree with the corrective action taken by the Correctional Center to segregate the purchasing function from the accounting function. However, management should train other staff members to serve as backup personnel when the unit is short-staffed.

Department's Response:

The New York State Minimum Standards 701.6 authorizes the Sheriff to establish a commissary and provides a general outline on how the commissary should be operated and managed. This section of the minimum standards requires that all profits be used for the direct welfare of the inmate population, and no funds be spent to directly benefit the Sheriff's Department or the County. The Department has operated the commissary at the Correction Center using Correction Officers, not only to operate the commissary, but also to supply needed support during times that an emergency response in needed throughout the Center. In June of 1995, the State Commission of Corrections modified their position on certain operational costs as they related to the commissary unit. Prior to 1995, any expenses incurred by the Department for staffing or other costs, such as utilities could not be charged against the profits of the commissary. The Commission has rendered an opinion that local Sheriff's throughout the State were authorized to charge salaries and other operational costs to the commissary. It was decided at that time, and remains today, that the salaries would not be charged back to the commissary, ensuring prices being charged to the inmates remain at a level constant with prices that are charged outside the Center.

The Center currently has assigned six officers to the commissary unit at an annual cost of approximately $500,000. In reviewing the possibility of charging the officers salaries that are assigned to the commissary unit against the profits, the Department took into account the substantial profits that were being generated by the Inmate Telephone Program. These profits, approximately $800,000 a year, go directly into the County's General Fund, are generated by the inmate population use of the telephone system at the Correction Center and therefore should be returned for the inmate's welfare. These funds could offset the cost of officers assigned to the commissary unit and allow the Center to maintain current prices. It is inappropriate to charge officers salaries and raise prices that the inmates are currently being charged when, as the State Commission recommends, profits generated by the inmate phone system are currently not being included as part of the commissary profits. If in fact these funds became part of the commissary profits, the Department would be able to offset the staff salaries with no negative impact on the inmate population.

Any privatization of the commissary must include not only the fiscal impact but the operational impact as well. With privatization, the Department will lose some of the flexibility it now enjoys by operating the commissary. The ability to redeploy staff to emergencies, the control of all items coming into the facility, not only items that are being sold, but the possibility of the vendor employees introducing contraband into the facility, the possible negative impact on the inmate population by increasing the prices being charged, the additional administrative work to monitor the vendor and the operation of the commissary, the officer that would be required to provide security, and any possible union contract violations. After exploring all of the above, the Department still maintains that operating the commissary unit with correction officers, and not privatizing the commissary, is in the best interest of the inmate population and the overall operation of the Correction Center.

Auditor's Follow-Up:

The Correctional Center takes the position that Corrections Officers are essential to operate the Commissary, and cites a number of reasons to support its conclusion, including security and administrative concerns. As we have previously stated, we think commissary privatization is entirely appropriate and is utilized in other jurisdictions without raising the problems the Center enumerates. Alternatively, the facility could consider using non-uniformed personnel whose job titles more clearly match the type of work performed by the officers now operating the commissary. With either of these alternatives, additional Corrections Officers would be available for deployment at the Center, and the county would have to pay less overtime to Officers.