



December 7, 2015

Butte County Board of Supervisors
25 County Center Drive, Suite 200
Oroville, CA 95965
c/o Kathleen Sweeney
Assistant Clerk of the Board
KaSweeney@ButteCounty.net
Via email and first class mail

Re: Use of Inmate Welfare Fund for SB 863 Application

Dear Supervisors Connelly, Wahl, Kirk, Lambert and Teeter,

The American Civil Liberties Union of Northern California (“ACLU”) urges you to reject the proposal to use monies from the Inmate Welfare Fund as part of the county’s SB 863 application for jail construction funds. The use of the Inmate Welfare Fund to finance the construction of a new jail facility in Butte County would be both unlawful and bad public policy.

Butte County’s Receipt of SB 863 Funds is Conditioned on the Legality of the County’s Proposed Use of Inmate Welfare Funds

The ACLU has closely followed the work of the Board of State and Community Corrections (“BSCC”) throughout its process of awarding the \$500,000,000 in financing to counties for construction of local adult criminal justice facilities that the Legislature authorized in SB 863. Butte County, in its application for \$40,000,000 of the SB 863 financing, has proposed using \$650,000 taken from its Inmate Welfare Fund as part of its required 10% contribution in matching funds.

At its meeting on November 12, 2015, the BSCC provisionally awarded \$40,000,000 to Butte County, but with conditions attached regarding the proposed use of money from the Inmate Welfare Fund. In particular, the BSCC expressly “conditioned [the award of funds] on a determination of the legality of Butte County’s proposed use of the Inmate Welfare Fund for county matching funds,” and provided that “if legal,” the BSCC would “encourage the county to find an alternative source of funds.” Email from BSCC Executive Director K. Howard to ACLU Advocate S. Meinrath, dated Nov. 23, 2015 (citing the BSCC’s motion on Agenda Item E, SB 863).

The Use of Money from the Inmate Welfare Fund for Jail Construction is Unlawful

Inmate Welfare Fund proceeds are not to be spent on anything except the benefit, education, and welfare of the inmates, nor are they, under any circumstances, authorized to be spent on new facility construction. As a result, Butte County's proposed use of these funds to help meet its 10% cash match requirement would, contrary to the assertion in its application, constitute an unlawful use of these funds.

Penal Code section 4025(e) authorizes use of the Inmate Welfare Fund as follows:

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. An itemized report of these expenditures shall be submitted annually to the board of supervisors.

West's Ann. Cal. Penal Code § 4025(e).

Several features of the statute are significant here. First, the statute prohibits the use of the Inmate Welfare Fund for "required county expenses of confining inmates, such as ... housing." *Id.* While there is a narrow exception for expenses that "augment ... required county expenses," *id.* (emphasis added), the exception merely confirms the default rule that expenditures for basic county obligations are prohibited. Second, the statute permits the Inmate Welfare Fund to be used only for expenses that further the inmates' "benefit, education, and welfare." *Id.* Given the statute's express prohibition against the use of funds for basic county obligations, expenses qualify as furthering an inmates' "benefit, education, and welfare" only if they are *not* required expenditures. Third, and only if money in the Inmate Welfare Fund is "not needed for the welfare of inmates," it may be used for "[m]aintenance of county jail facilities." *Id.* In budgeting parlance, "maintenance" expenditures are well understood to mean operating rather than capital costs. The statute is consistent with this common budgetary terminology as it defines "[m]aintenance" to include "salary and benefits" of staff used in programs that benefit inmates. *Id.*

The use of the Inmate Welfare Fund to finance new facility construction would be an unlawful use of these funds, in violation of Penal Code section 4025. First, construction of jail facilities

constitutes a “required county expense[] of confining inmates,” in particular, “housing,” that is a type of expenditure expressly prohibited by the statute. New jail construction does not “benefit” inmates or further their “welfare” within the meaning of the statute, which excludes expenditures for basic county obligations such as housing. The County’s application for the SB 863 financing asserts that the Inmate Welfare Fund may be used to help finance this construction because “...all such funds would be used for programming space.” Butte County SB 863 Proposal, Statement of Need (“Statement of Need”) at 34.¹ In fact, the 10% cash match requirement does not apply only to the programming spaces, but to the whole project, which includes building four 24-person housing pods to replace 96 beds in the existing main jail. Statement of Need at 14. Even if the county’s proposal had been to build a facility with only programming space, construction of this type of adult criminal justice facility is still a basic county responsibility.

Next, the statute’s exception for use of the funds for “maintenance” does not apply for two reasons. The county has not demonstrated the prerequisite that there are monies in the Inmate Welfare Fund “not needed for the welfare of the inmates,” and capital construction costs do not in any event constitute “maintenance.” Finally, the statute’s exception for expenditures that “augment ... required county expenses” also does not apply. *Id.* As an initial matter, the County was not required to construct this new facility, nor was it required to apply for state funds to do so. Therefore the project does not fall under the statute’s exception. However, even if this was considered a required expense, to be eligible for SB 863 funding, the County is *required* to provide a 10% match toward the total cost of the project. The County is currently proposing to use Inmate Welfare Funds toward the *required* 10% match. Thus, Inmate Welfare Funds would be used to pay for required county expenses, not to augment them.

Other counties have been stopped from using the Inmate Welfare Fund to pay for basic county responsibilities that should have been paid for out of the general fund. For example, a 2005 class-action lawsuit filed in Santa Clara County resulted in the county agreeing to pay back \$1.5 million to the county’s Inmate Welfare Fund for the inappropriate use of those funds to pay for basic county responsibilities, including kitchen officers, guards and staff for mandated programs.² The county also agreed to pay \$400,000 in attorney’s fees.

If Butte County proceeds with plans to use the Inmate Welfare Fund for jail construction, it risks incurring similar liability.

The Use of Inmate Welfare Funds for Jail Construction is Bad Public Policy

In addition to being illegal, use of the Inmate Welfare Funds for jail construction is simply bad public policy. The Inmate Welfare Fund is derived from surcharges the sheriff places on phone calls between inmates and their families and on commissary items, such as small food items or personal hygiene products, which inmates may purchase with any money placed on their books

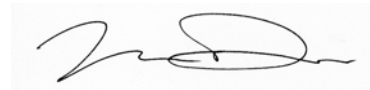
¹ http://www.bscc.ca.gov/downloads/butte_county.pdf.

² <http://www.lawfoundation.org/documents/HopkinsFinalSettlementAgreement.pdf>.

by their families. Therefore, the Fund is essentially created through taxing the families of inmates, who are some of the poorest residents of Butte County. Increasing the financial burden on these families only perpetuates the cycles of poverty that undergird our criminal justice system. Any assumption that there may be generalized public benefit from this construction is insufficient to enable the county to finance the project with funds derived exclusively from the families of inmates. Accordingly, the BSCC unanimously expressed its desire at the November 12, 2015 hearing, regardless of the legality, for Butte County to find other funds with which to contribute its 10% match, with one BSCC member referring to the proposed use of the Inmate Welfare Fund as “outrageous.”

Because the use of the Inmate Welfare Fund for jail construction would be both unlawful and bad policy, we urge you to reject the proposal to use the funds as part of the County’s SB 863 application.

Respectfully,



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