

PENDING APPROVAL

REQUISITION SHEET MUST BE ATTACHED
(Applies when agenda item requires a specific payment)

OKLAHOMA COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM REQUEST SHEET

For the Monday, May 03, 2010 Agenda
(Day of Meeting) (Date and Year of Meeting)

DEPT.: District 2
(Department requesting this item)

BY: Steve Satterwhite
(Contact person for this Item)

EXT. 2281
(Contact's extension)

NAME OF FUND: _____

AGENDA ITEM DESCRIPTION: Discussion and possible action to approve a pilot program concerning "Graffiti Abatement." Participants in the "Community Sentencing Program" will be involved in the pilot program. The attached letter from David Prater, District Attorney, outlines the procedures and the judiciary has also been apprised of the program. Requested by Brian Maughan, Commissioner, District No. 2, and approved as to form and legality by John Jacobsen, Assistant District Attorney. (Document Received)

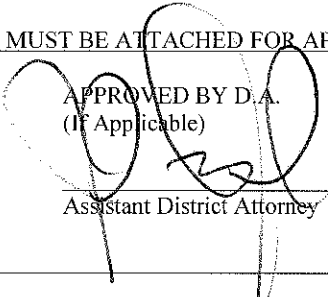
(ALL NECESSARY DOCUMENTATION MUST BE ATTACHED FOR APPROVAL)

APPROVED BY ENGINEER
(If Applicable)

APPROVED BY D.A.
(If Applicable)

APPROVED BY PURCHASING
(If Applicable)

County Engineer


Assistant District Attorney

4/27/2010

Purchasing Agent

NOTE: A COMMISSIONER MUST APPROVE ALL EMERGENCY REQUESTS
FOR ANY ITEM SUBMITTED AFTER THE DEADLINE
(THE DEADLINE IS 9:00AM ONE WEEK PRIOR TO THE DATE THAT THE AGENDA IS TO BE POSTED)

DATE OF REQUEST:
04/26/2010

BY: _____
(Person Submitting or Requesting Emergency Request)

DATE OF APPROVAL: _____

APPROVED BY: _____

COUNTY COMMISSIONER

Number of ORIGINAL DOCUMENTS you have attached: 3. **NOTE:** The County Clerk will keep one original and will return the remaining originals to you. If you provide only one original, the Board Secretaries will return one photocopy to you. However, if you have special circumstances that require the County Clerk to (check one): keep more than one original; or return all originals to you, please describe them for the County Clerk's consideration: _____

Special Instructions: _____

PENDING APPROVAL



OKLAHOMA COUNTY
SEVENTH DISTRICT
STATE OF OKLAHOMA

320 ROBERT S. KERR AVE., SUITE 505
OKLAHOMA CITY, OKLAHOMA 73102
(405) 713-1600
FAX (405) 235-1567

DAVID W. PRATER
DISTRICT ATTORNEY

SCOTT ROWLAND
FIRST ASSISTANT DISTRICT ATTORNEY

March 4, 2010

Chairman Ray Vaughn
Commissioner Brian Maughan
Commissioner Willa Johnson
Public Defender Robert Ravitz

RE: Graffiti Cleanup

Dear Commissioners and Oklahoma County Public Defender Ravitz:

There has been interest expressed in whether the county may use offenders sentenced to Community Service to clean up graffiti areas within Oklahoma County. The short answer is yes.

As identified by Mr. Ravitz, under Title 22 O.S. § 991a-4.1, counties in excess of 550,000 in population are authorized to operate existing Community Sentencing programs. While there are statutory limitations concerning which offenders may participate in community service programs, there are also statutory exemptions from liability to the county when offenders sentenced under community service work within the county. For example, under Title 22 O.S. § 991a-4.1(I), participants in community service are immune from liability for any offender participating in the program under the Workers' Compensation Act in Title 85, and for torts committed by or against any offender participating in the program to the extent specified in Sections 227 and 228 of Title 57.

In addition, under the Government Tort Claims Act, there is added exemption and limitation of liability provided to political subdivisions using offenders sentenced to community service. Under Title 51 O.S. § 155, the state or a political subdivision shall not be liable if a loss or claim results from:

22. Any court-ordered or Department of Corrections approved work release program; provided, however, this provision shall not apply to claims from individuals not in the custody of the Department of Corrections based on accidents involving motor vehicles owned or operated by the Department of Corrections;

or

32. Any court-ordered community sentence;

(Title 51 O.S. §§ 22, 32)(It could also be argued that because community sentencing programs are authorized by the Courts and Legislature, political subdivisions also receive the protection afforded these other branches of government as well. See Title 51 O.S. §§ 155(1), (2), and (3))

CAN GRAFFITI REMOVAL BY OFFENDERS SENTENCED UNDER COMMUNITY SERVICE WORK TO REMOVE GRAFFITI FROM PRIVATE BUSINESSES?

The question that must be addressed, however, is whether community sentencing offenders are allowed to work to remove graffiti from private businesses, and whether such service results in an improvement to such business, thereby violating Constitutional provisions in the State of Oklahoma which state political subdivisions cannot offer credit, or allow credit to be loaned or pledged to any individual, company, corporation or association, . . . “nor make donation by gift, subscription to stock, by tax, or otherwise, to any company, association, or corporation.” (See Article X, Section 15(A) of Oklahoma Constitution)

Because the county is a political subdivision of the State of Oklahoma, the restrictions upon a state donating or contributing to any company, association or corporation is also a restriction on counties within the State of Oklahoma. However, there is some guidance and allowances for the use of monies from the state or political subdivisions despite the constitutional restrictive language in Article X, Section 15(A). While there is abundant case law affirming the maxim that public funds cannot be used to subsidize a private institution, the term “public purpose” should not be construed “in a narrow or restrictive sense.” (See *Helm v. Childers*, 181 Okl. 535, 536, 75 P.2d 398, 399 (1938))

In a 1989 Oklahoma Attorney General Opinion, reference is made to Oklahoma Supreme Court cases interpreting Article X, Section 9, of Oklahoma’s Constitution. Under Section 9 of Article X, it is explicitly stated that “[n]o ad valorem tax shall be levied for State purposes, nor shall any part of the proceeds of any ad valorem tax levy upon any kind of property in this State be used for State purposes.” But in this same AG’s Opinion there is language noting the Oklahoma Supreme Court “has said that this provision does not apply where a local government purpose is served along with any state purposes.” (See 1989 AG OK 42)(*State ex rel. Blankenship v. Atoka County*, 456 P.2d 537 (Okla. 1969); *Excise Board of Stephens County v. Chicago, R.I. & P. Ry. Co.*, 34 P.2d 268 (Okla. 1934))

Removal of graffiti, either on public property or private property appears to meet several local governmental purposes. For instance, neighborhoods and businesses plagued by gangs who “tag” properties to visibly declare such area as part of its “turf” could be discouraged to do so if prompt clean up of the graffiti is accomplished. Such action could discourage gangs from making known their territory to rival gangs and lead to reduction in gang violence in the area. Public and private land owners would be able to promote safety of their respective neighborhoods and police services could be expended elsewhere rather than consecrating inordinate amounts of manpower to patrol areas which once were ripe for gang activities and

PENDING APPROVAL

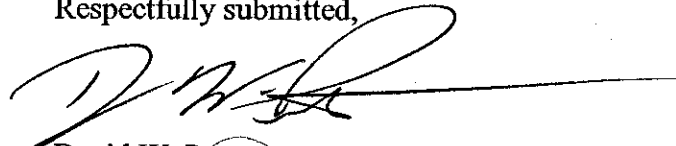
hostilities. Discouragement to gang members can result when it becomes known that any graffiti "tagging" of public or private businesses will be promptly removed, thereby diminishing the incentive gang members hope to have that their tagging efforts will be seen by fellow and rival gang members.

CONCLUSION

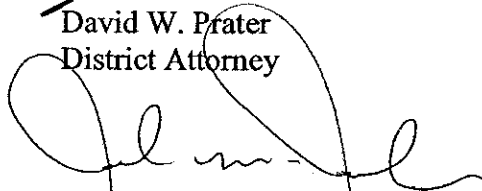
Using offenders sentenced by the courts to community service for graffiti removal appears to be allowable under the statutes of the State of Oklahoma. There is statutory protection afforded political subdivisions in using community-sentenced offenders for this type of work. If the county moves forward in this effort, it is recommended guidelines and conditions be promulgated. For instance, there needs to be instructions given to those sentenced under the "graffiti-removal" crews of community sentencing concerning where they must report to begin their service, what type of clothes they should wear, what they must bring with them, i.e., gloves, proper clothing and footwear, whether they bring their own sack lunch, how long each shift will be, and how they will be transported to and from the site. On the part of the county, there needs to be clear requirements established stating what areas of the county are considered "graffiti-prone" areas, how transportation will be provided, what type of supervision will be mandated, who will be responsible for the supervision of such graffiti-removal crews and the proper recording of hours each offender spends in graffiti-removal efforts in order to be credited toward the total hours assessed under community service.

It is also recommended that private businesses be required to bear the cost of graffiti-removal supplies in order to benefit from the manpower and efforts of those offenders participating in graffiti removal. In no instance shall businesses benefit in increased value of their property by use of these graffiti-removal crews—such crews are there only to remove graffiti from the exterior of the business, not to improve or enhance the business or its net worth.

Respectfully submitted,



David W. Prater
District Attorney



John M. Jacobsen
Civil Division Director
Assistant District Attorney

JMJ/jmj