

March 23, 2015

Sheriff Dan Peak
Crawford County Sheriff's Office
225 N. Enterprise
Girard, KS 66743

Re: Crawford County Jail Policy on Inmate Subscriptions to Periodicals & Books
Our File No.:15-0007007

Dear Sheriff Peak:

It has recently come to my attention that the Crawford County Jail prohibits inmates from receiving newspapers, magazines, and books from publishers. So that I can investigate this issue, I request – pursuant to the Kansas Open Records Act), K.S.A. 45-215 *et seq.* – a copy of any and all policies or rules governing the right of inmates and detainees held in the Crawford County Jail to subscribe to periodicals (including newspapers and magazines) and to order books and other publications by mail. I request that the records responsive to my request be copied and sent to me at the address below within three business days of the receipt of this request. In the alternative, you could send such records to me by e-mail at dbonney@aclukansas.org. If you anticipate that the fulfillment of this request will take longer than three days to complete, please contact my office and let me know an anticipated time for completion of this request.

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An absolute ban on periodical subscriptions, including newspapers and magazines, and on orders of books is unconstitutional. Over forty years ago, the Supreme Court noted that “[t]here is no iron curtain drawn between the Constitution and the prisons of this country,” *Wolff v. McDonnell*, 418 U. S. 539, 555-556 (1974), and that “a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system,” *Pell v. Procunier*, 417 U.S. 817, 822 (1974). Specifically, the Court held that inmates retain the First Amendment right to receive information. *Procunier v. Martinez*, 416 U.S. 396, 408 (1974). *See also Jacklovich v. Simmons*, 392 F.3d 420, 426 (10th Cir. 2004) (same). Moreover, “pretrial detainees . . . retain at least those constitutional rights that . . . are enjoyed by convicted prisoners.” *Bell v. Wolfish*, 441 U.S. 520, 545 (1979).

Although the right is not unlimited, inmates retain a First Amendment right to receive books and magazines. *See Bell v. Wolfish*, 441 U.S. at 549 (acknowledging pretrial detainees’ First Amendment right to receive books and magazines but upholding “publisher only” restriction on federal pretrial detainees’ right to receive books from outside the institution). The Tenth Circuit has also upheld such a publisher-only rule, *Jones v. Salt Lake County*, 503 F.3d 1147, 1158-9 (10th Cir. 2007), but I am unaware of any case upholding an absolute ban on

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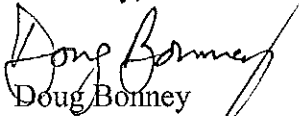
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inmates ordering and receiving books and periodicals. Here, the jail's absolute ban on inmate book orders and periodical subscriptions violates the First Amendment right of inmates to receive information without serving any important penological purpose. Thus, any jail ban on book orders and periodical subscriptions would be unconstitutional.

The federal courts have also unanimously held that jails cannot – consistent with the Constitution – ban inmates from receiving periodicals such as newspapers and magazines. *See, e.g., Thomas v. Leslie*, 176 F.3d 489, 1999 WL 281416 (10th Cir. 1999) (jail's absolute ban on newspapers unconstitutional); *Wilkinson v. Skinner*, 462 F.2d 670, 673 n. 5 (2d Cir. 1972) (“refusal to deliver a newspaper would ordinarily be interference with appellant’s first amendment rights”); *Kincaid v. Rusk*, 670 F.2d 737, 744 (7th Cir.1982) (total ban on newspapers unjustifiable when hazards of newspaper possession could as well be caused by reading material detainees were permitted to have); *Mann v. Smith*, 796 F.2d 79, 82-83 (5th Cir. 1986) (county jail’s policy of banning newspapers and magazines violated a pretrial detainee’s First Amendment rights where the state failed to show the ban served a legitimate government objective); *Green v. Ferrell*, 801 F.2d 765, 772 (5th Cir.1986) (jail’s prohibition on newspapers violated First Amendment); *Sizemore v. Williford*, 829 F.2d 608, 610 (7th Cir. 1987) (absent restrictions based on legitimate goals of confinement, prison inmates retain First Amendment right to receive and read newspapers); *Payne v. Whitmore*, 325 F. Supp. 1191, 1993 (N.D. Cal.1971) (First Amendment guarantees inmates the right to receive newspapers and magazines); *United States ex rel. Manicone v. Corso*, 365 F. Supp. 576, 577 (E.D. N.Y. 1973) (First Amendment prohibits complete ban on news); *Mitchell v. Untreiner*, 421 F. Supp. 886, 895 (N.D. Fla.1976) (failure to permit inmates to read daily newspaper denied First Amendment freedom of speech, association, and right to be informed citizens in democratic society); *Hutchings v. Corum*, 501 F. Supp. 1276, 1299 (W.D. Mo. 1980) (“absolute denial of access to newspapers violate[d] the inmates’ First Amendment guarantees”); *Spellman v. Hopper*, 95 F. Supp. 2d 1267 (M.D. Ala. 1999) (absolute prohibition on subscription magazines and newspapers applied to administrative segregation inmates in Alabama not reasonably related to legitimate penological goals); *Avery v. Ferguson*, 2010 U.S. Dist. LEXIS 101864, 43-44 (W.D. Ark. Sept. 3, 2010) (jail newspaper ban unconstitutional).

For these reasons, I urge the Crawford County Sheriff’s Office to rescind its current policy banning inmates from receiving periodicals and books. I look forward to hearing from you about these matters within ten days of the date of this letter.

Sincerely,



Doug Bonney
Chief Counsel & Legal Director
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