

TESTIMONY OF JOSEPH D. LEHMAN, COMMISSIONER
PENNSYLVANIA DEPARTMENT OF CORRECTIONS
CONCERNING PRIVATE PRISONS
BEFORE THE HOUSE JUDICIARY COMMITTEE
MARCH 14, 1991

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PRIVATIZATION AS A CONCEPT SHOULD NOT BE BASED ON THE SIMPLE NOTION THAT THE PRIVATE SECTOR CAN DO THINGS BETTER AND AT LESS COST THAN THE PUBLIC SECTOR.

A GENERALIZATION SUCH AS THIS IS SIMPLY NOT TRUE. WE CANNOT REGARD THE PRIVATE SECTOR AND PUBLIC SECTOR AS INTERCHANGEABLE. THE TASKS AND ACTIVITIES THAT GOVERNMENT ENGAGES IN ARE DIFFERENT FROM THOSE TYPICALLY CARRIED OUT BY THE PRIVATE SECTOR.

PRIVATE SECTOR INVOLVEMENT IN PUBLIC SECTOR ACTIVITIES OUGHT TO BE VIEWED AS A PARTNERSHIP NOT AS AN EITHER/OR PROPOSITION.

WE OUGHT TO LOOK AT SPECIFIC TASKS AND FUNCTIONS WHICH THE PRIVATE SECTOR HAS SOME UNIQUE EXPERTISE AND CAPACITY TO PROVIDE IN A COST EFFECTIVE MANNER - IN A CORRECTIONAL ENVIRONMENT IT MIGHT BE

CONSTRUCTION - MAINTENANCE

MEDICAL SERVICES

TREATMENT OR REHABILITATIVE SERVICES INCLUDING RESIDENTIAL PROGRAMS.

IT HAS NOT TRADITIONALLY INVOLVED THOSE ACTIVITIES DIRECTLY RELATED TO THE EXERCISE OF GOVERNMENT'S COERCIVE AUTHORITY OVER ITS CITIZENS.

THERE IS SIMPLY NO BASIS FOR CONCLUDING THAT THE PRIVATE SECTOR HAS ANY UNIQUE EXPERTISE OR CAPACITY TO CARRY OUT THOSE FUNCTIONS.

WHERE THERE IS A COMPONENT OF COERCIVE AUTHORITY EXERCISED THROUGH THE USE OF PHYSICAL FORCE INCLUDING DEADLY FORCE, I PERSONALLY HAVE A PROBLEM WITH THE NOTION THAT NON-GOVERNMENTAL - FOR PROFIT ENTITIES WOULD BE INVOLVED.

WHERE SUCH AUTHORITY IS NOT A COMPONENT THEN THE DECISION ON PRIVATIZATION SHOULD BE LEFT TO AN ASSESSMENT OF WHETHER PRIVATIZATION OF NORMALLY PUBLIC SECTOR ACTIVITIES PROVIDES AN OPPORTUNITY TO BRING AN ADDED QUALITY OF EXPERTISE AND SERVICE TO A PARTICULAR FUNCTION.

WITH THIS AS BACKGROUND PLEASE LET ME COMMENT ON THE SPECIFIC FEATURES OF THE LEGISLATION BEFORE THE COMMITTEE TODAY.

THE INTENT AS I READ THE LEGISLATION IS TO EXTEND TO COUNTIES A LEGAL CAPACITY TO CONTRACT FOR THE INCARCERATION OF LOW-RISK OFFENDERS.

I SUPPOSE THE DESIRE IS TO PROVIDE MORE FLEXIBILITY IN THE PROVISION OF THIS SERVICE.

BEYOND MY PHILOSOPHICAL OBJECTION NOTED EARLIER, I AM CONCERNED THAT THE ACTUAL EFFECT OF THE LEGISLATION WOULD BE TO ADD AN UNNECESSARY CORRECTIONAL CAPACITY AT AN INCREASED COST TO COUNTY GOVERNMENT.

LET US START WITH THE DEFINITION OF THE OFFENDER POPULATION AS LOW RISK.

LIMITING THE POPULATION TO LOW RISK BRINGS TO QUESTION THE NEED FOR PRISON TYPE OF HOUSING.

IT IS MY UNDERSTANDING THAT COUNTIES ARE AUTHORIZED TO CONTRACT WITH RESIDENTIAL PROGRAMS PROVIDING A VARIETY OF SERVICES FOR OFFENDERS SENTENCED TO PROBATION, A TERM OF PARTIAL CONFINEMENT, OR AS A CONDITION OF PAROLE.

IF THE QUESTION IS ONE OF LEGAL STATUS - I MIGHT SUGGEST THAT RATHER THAN CREATING PRIVATE MINIMUM SECURITY PRISONS IT MIGHT BE MORE APPROPRIATE TO EXTEND TO THE COUNTIES THE AUTHORITY TO CREATE PRE-RELEASE PROGRAMS FOR APPROPRIATELY CLASSIFIED INMATES - RESIDENTIAL PROGRAMS WHICH PROVIDE A RANGE OF SERVICES FROM WORK TRAINING RELEASE TO TOTAL CONFINEMENT RESIDENTIAL PROGRAMS PROVIDING TREATMENT SERVICES.

THE KEY TO THIS SEEMS TO BE TARGETING THE OFFENDER POPULATION AS THE PROPOSED LEGISLATION DOES TO LOW RISK OFFENDERS. SUCH A DEFINITION BY THE WAY IS CONSISTENT WITH THE CORRECTIONS CLASSIFICATION OF MINIMUM SECURITY.

MINIMUM CUSTODY AS AN INMATE CLASSIFICATION IN THIS RESPECT WOULD MEAN THOSE OFFENDERS WHOSE BEHAVIOR COULD BE MANAGED IN A LOW SECURITY ENVIRONMENT AND WHO FROM A PUBLIC SAFETY PERSPECTIVE ARE NOT IN A HIGH RISK CATEGORY.

THE BOTTOM LINE IS THAT I AM NOT CONVINCED THAT THERE IS A NEED FOR THE PROPOSED LEGISLATION, AND, IF IT WERE PASSED, I AM AFRAID THAT THE COST OF LICENSING AND REGULATING THE FACILITY ALONG WITH THE BONDING AND INSURANCE REQUIREMENTS WOULD BE COST PROHIBITIVE.

WITH REGARD TO LICENSING AND REGULATING THESE FACILITIES, IT IS INTERESTING TO NOTE THAT THE EFFECTS OF THE LEGISLATION WOULD BE TO IMPOSE A STANDARD ON PRIVATE SECTOR PRISON MORE STRINGENT THAN CURRENTLY EXIST FOR COUNTY PRISON.

ALTHOUGH THE DEPARTMENT OF CORRECTIONS CURRENTLY INSPECTS COUNTY PRISONS AND HAS DEVELOPED STANDARDS TO DO SO - THOSE STANDARDS HAVE BEEN DEVELOPED FROM AN HISTORICAL PERSPECTIVE - I.E. MINDFUL OF THE WIDE RANGE OF PRACTICES, PHYSICAL PLANTS AND RESOURCES THROUGHOUT THE COUNTIES, AND THE FACT THAT THE DEPARTMENT HAS LITTLE AUTHORITY TO ENFORCE THOSE STANDARDS.

IN ESSENCE THIS LEGISLATION WOULD RESULT IN THE PROMULGATION OF MORE STRINGENT STANDARDS WITH A LEGISLATIVE MANDATE TO STRICTLY ENFORCE THE SAME, RESULTING IN A DOUBLE STANDARD AND PROBABLY AT AN INCREASED COST TO THE COUNTIES.

GIVEN THAT SCENARIO IT WOULD SEEM THAT THIS IS A PROPOSED LEGISLATIVE AREA THAT NEEDS A GREAT DEAL MORE STUDY BEFORE LEGISLATION IS PASSED.