

Trial begins over Davis County's withholding of copyrighted jail standards

By MARK SHENEFELT

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FARMINGTON — An attorney representing Davis County sparred with a judge Wednesday over the potential impacts of releasing copyrighted jail standards to civil liberties groups.

“Whoa, whoa, whoa, whoa, whoa,” 2nd District Court Judge David Connors said as Blake Hamilton, a contract attorney for the county, made his opening arguments in a trial focused on the standards.



Hamilton was arguing that if Connors ordered the county to release the standards to the American Civil Liberties Union of Utah and the Disability Law Center, the county could become legally exposed for violating the copyright, because it could damage the standards' commercial value.

The judge said he will decide only whether the standards are to be released to the civil liberties groups, not to the public at large.

“I would neither authorize or prohibit” the ACLU or the DLC on what they did with the standards if they obtain them, Connors said.

The copyright holder — a private company that markets jail operating guidelines to sheriff's offices around the country — may have a legal issue with the civil liberties groups at that point, but not with the county, the judge said.

The trial, expected to last through the day and possibly part of Thursday, is the latest phase in a three-year struggle over jail standards used to manage the Davis County Jail and other Utah jails.

It is a bench trial before Connors, meaning no jury is used.

The civil liberties groups sued for access to the standards in 2017 after the county and the State Records Committee rejected a public records request for the documents.

The county withheld the standards on the grounds that their release may jeopardize jail safety and security and harm the copyright interest of the standards' author.

The litigation arose at the height of scrutiny over operations of Utah's county jails, which reported a record 25 deaths in 2016, including six in the Davis jail.

Consultant Gary DeLand wrote the standards for the Utah Sheriffs' Association and has sold modified versions to jail authorities in more than a dozen states.

The Sheriffs' Association in 2018 publicly released general sections of the jail standards but continued to withhold the copyrighted portions in which legal guidance is provided to jail officials and personnel on items such as medical care and other issues regarding inmates' well-being.

The civil liberties groups already won a ruling from Connors in 2019 that jail inspection reports — compiled based on evaluations tied to the standards — are public records and must be released.

A subsequent Standard-Examiner review of those reports covering 2012-17 showed the Davis jail fell short of staying in compliance on various standards.

In 2020, the new county sheriff, Kelly Sparks, elected in 2018, released the 2019 inspection report, which showed the jail achieved 100% compliance that year.

In his opening arguments Wednesday, one of the civil liberties groups' attorneys, David Reymann, said the public has a vital interest in understanding how jails are run.



The lawsuit, Reymann said, is about “whether a public jail can keep standards that guide its operations secret just because it outsourced the writing of those standards to a private company.”

Under Utah’s controlling law, the Government Records Access and Management Act, “the answer is no,” Reymann said.

“GRAMA embodies a presumption of public access,” Reymann said.

“Merely being copyrighted is not enough” to warrant a government agency classifying such a record as protected, he said.

He said it is telling that DeLand and the National Institute of Jail Operations, which is the current copyright holder, have not sought to intervene in the access lawsuit.

“NIJO has had years to enter into this case,” Reymann said. “Where are they? If their copyright interest is so important, why are they using the county as a proxy for that?”

Ashley Gregson, another contract attorney representing the county, peppered two ACLU and DLC witnesses about the groups apparently passing up an opportunity to inspect the private standards in 2017.

That year, DeLand and NIJO held meetings with state legislators, the media and other interested parties at the State Capitol.

Tate McCotter, NIJO executive director, testified that a market still exists in Utah for his company’s services, but the jail standards contract with the Sheriffs’ Association and the counties ended amid the furor over access to the standards.

Reymann said the suit seeks only the standards as they existed in 2017.

McCotter said the current standards are “very unique” and are updated frequently for NIJO’s customers.

He said NIJO bought them from DeLand in 2020 for more than \$200,000.

“I mortgaged my house” to acquire them, McCotter said.

Public release of the standards would severely damage his business, McCotter said.
You can reach reporter Mark Shenefelt at mshenefelt@standard.net or 801-625-4224. Follow him on Twitter at @mshenefelt.