Opinion No. 68-21

February 14, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Mr. Ethan K. Stevens Attorney, Town of Clayton Clayton, New Mexico

QUESTIONS

Is the county liable to a city for reasonable board bills for:

1. Prisoners arrested for state law violations by municipal police officers and confined temporarily to the municipal jail?

2. Juveniles held in the municipal jail pursuant to the commitment of a Juvenile Judge?

3. Prisoners appealing to the district court from a conviction for violation of a municipal ordinance?

4. Prisoners appealing to a district court from a conviction for violation of a state law?

CONCLUSIONS

1. No.

2. See analysis.

3. No.

4. See analysis.

OPINION

*{*38}* **ANALYSIS**

New Mexico municipalities have been granted the power to protect the property and preserve peace and order within the municipality, Section 14-17-1, N.M.S.A., 1953 Compilation (1967) Interim *{*39}* Supp.). In order that this power may be carried out the municipality may provide for peace officers, Section 14-12-2, N.M.S.A., 1953 Compilation (1967 Interim Supp.). A municipal police officer, under Section 14-12-2 has power to arrest for violations of state law and municipal ordinances, and when he does so he has the same powers and responsibilities as sheriffs and constables in similar cases. Thus, when a municipal police officer has arrested a person for violation of a state law or municipal ordinance he is not acting under authority granted him by a county sheriff. By performing his duties the municipal police officer is acting as the

agent of the municipality. He is executing the power of the municipality to protect property and perserve peace and order. And when the municipal police officer places an offender he has arrested in the municipal jail it still is the power of the municipality which is being exercised. If a writ of habeas corpus were sought by such a prisoner, it would be directed to the municipal officer having control over him and not to the county sheriff.

Therefore, we are of the opinion that persons arrested and held by municipal police officers for violation of a state law or a municipal ordinance are municipal prisoners. When such prisoners are held in the municipal jail the municipality is liable for their upkeep. We note here that this opinion does not intend to imply that those charged with violations of state law do not, at some point prior to district court proceedings, come into the custody of the county sheriff.

We are also of the opinion that persons convicted of violations of municipal ordinances who have appealed to the district court but remain in the municipal jail are the responsibility of the municipality. Here, again, these persons were arrested by and are held under the powers the legislature has granted to municipalities.

We fail to understand, however, why a municipality must be forced to accept or pay for the upkeep of prisoners convicted of violations of a state law who are appealing to the district court. Those convicted of violation of such laws are to be committed to the county jail. Section 42-2-2, N.M.S.A., 1953 Compilation. The only exception to this appears to be in cases where such persons are convicted of such an offense by a justice of the peace whose precinct is within a town or village more than fifty miles from the county seat. Sections 42-2-19, 42-2-20, N.M.S.A., 1953 Compilation. In both cases the county is liable for upkeep of the prisoner.

Therefore, we are of the opinion that a municipal jail should not accept as prisoners those who are convicted of a violation of a state law. However, a municipality and county could make some agreement by which the municipal jail could be used as a county jail for certain purposes.

The judge of a juvenile court has power to commit a juvenile as set forth in Section 13-8-53, N.M.S.A., 1953 Compilation 1967) Interim Supp.), which provides as follows:

Provisions for commitment of Juveniles. -- When any juvenile has been found to be within the provisions of the Juvenile Code of New Mexico, the judge may issue an order to commit such juvenile:

A. To the care and custody of his parents or to a reputable citizen of good moral character, subject to such conditions as the juvenile court may impose;

B. To any suitable institution, association, public or private agency or school willing to receive such juvenile, subject to such conditions as the juvenile court may impose;

C. To the Los Lunas Hospital and Training School or the New Mexico Insane Asylum, *{*40}* in the event the juvenile court determines that the juvenile is in need of treatment of the type afforded by those institutions;

D. In the event the juvenile is a boy, to the New Mexico Boys' School until twenty-one years of age, unless sooner paroled or released by the order of the juvenile court in accordance with the provisions of this act;

E. In the event the juvenile is a girl, to the Girls' Welfare Home until twenty-one years of age, unless sooner paroled or released by the order of the juvenile court in accordance with the provisions of this act; or

F. Take such other action as the court deems necessary in the best interest of the child.

We are of the opinion that subsection F of the quoted statute does not operate as a commitment section. Therefore, the only places to which a juvenile court may commit a juvenile are those listed in subsections A through E. And of those only subsection B might be construed to permit the commitment of a juvenile to a municipal jail.

However, we cannot so construe subsection B. By inserting the adjective "suitable" into subsection B of Section 13-8-53, the legislature clearly intended to limit the institutions, agencies and schools to which juveniles could be committed. We are of the opinion that a "suitable" institution is one which can perform the rehabilitative function envisioned by the Juvenile Code. Thus we conclude that a municipal jail is not a "suitable" institution within the meaning of Section 13-8-53.

By: Paul J. Lacy

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