"The city or town council has power: To establish and maintain a jail for the confinement of persons convicted of violating the ordinances of the city or town; to make rules for the government of the same, and to cause the prisoners to work on streets or elsewhere within three miles of the city."

In this code section, the city council must make rules for the regulation of the city jail and as a consequence, is granted broad legislative power. There is no specific statute requiring medical aid to prisoners.

It is the duty of each county to provide adequate care and medical aid, services, and hospitalization for all indigent county residents under the provisions of Section 71-309, R.C.M., 1947, as amended by Chapter 199, Laws of 1951. The care of inmates of the county jail is made the duty of the county physician in Section 71-110, R.C.M., 1947, as this section provides in part as follows:

"The board must annually, at their June meeting, make a contract with some resident practicing physician to furnish medical attendance to the sick, poor, and infirm of the county, and to the inmates of the county jail, and must also make provision for the furnishing of medicine to the same; . . . "

It is to be noted in the above quoted statute that all inmates of the county jail whether indigent or not must be cared for by the county physician. This fixes a specific duty to care for the inmates of the county jail and the statute by so designating the county jail precludes an interpretation which makes it the duty of the county physician to care for every inmate of a city jail.

While it is made the duty of the county physician to care for the inmates of the county jail whether they be able to pay for the services or not, under Section 71-303, R.C.M., 1947, an applicant for relief including a person who needs medical care must be first investigated. This section reads as follows:

"An applicant for assistance including medical care and hospital-

Opinion No. 7

Cities and Towns—Emergency Medical Care of City Prisoners — Indigent Persons—County Jails.

HELD: It is the duty of a city to provide emergency medical attention for a prisoner in a city jail except for a prisoner whose medical care has been assumed by the county prior to incarceration in the city jail.

April 18, 1955.

Mr. John C. Harrison
County Attorney
Lewis & Clark County
Helena, Montana

Dear Mr. Harrison:

You have requested my opinion as to whether it is the duty of the county physician to attend and care for indigent sick and injured persons who are incarcerated in the city jail.

Section 11-937, R.C.M., 1947, provides as follows:

ization shall be eligible to receive assistance only after investigation by the county department reveals that the income and resources are insufficient to provide the necessities of life, and assistance shall be provided to meet a minimum subsistence compatible with decency and health."

The fact that Section 71-308, R.C.M., 1947, as amended by Chapter 199, Laws of 1951, makes it the legal and financial duty of the county to provide medical aid for persons unable to pay for the same does not automatically make a poor person eligible for county medical aid as there must first be the investigation and determination of the need for such relief as required in Section 71-303, R.C.M., 1947.

The city's obligation to furnish medical aid to prisoners is not governed by a specific statute as is the case for inmates of the county jail. However, the courts have recognized the municipality's duty to furnish emergency medical aid to prisoners. Liability for payment for such services is that of the municipality rather than of the officers. It was so held in Spicer vs. Williamson, 191 N.C. 487, 132 S.E. 291, 44 A.L.R. 1280, where the court said:

"It cannot be held that a sheriff, or other officer, is under a legal obligation to provide medical attention for a prisoner in his custody, for the payment of which he is personally liable. The relation between the officer and his prisoner is not voluntary on the part of either. On the part of the officer, it results from the performance by him of a public duty, and, while he is liable personally both to the prisoner and to the public for a breach of duty to either—for which he may be required to answer in damages to the prisoner, or upon indictment to the public—he cannot be held liable for medical or surgical services required by the condition of the prisoner, at the time of his arrest, or after he had been taken into custody. The prisoner by his arrest is deprived of his liberty for the protection of the public. It is but just that the public be required to care for the prisoner, who cannot, by reason of the deprivation of his liberty, care for himself . . ."

In view of the above quoted authority, and the criminal statute, Section 94-3917, R.C.M., 1947, which provides:

"Every officer who is found guilty of wilful inhumanity or oppression toward any prisoner under his care or in his custody, is punishable by fine not exceeding two thousand dollars, and by removal from office."

It is the public policy for a city to furnish emergency medical aid to a prisoner in the city jail. If the prisoner is an indigent person who has been investigated by the proper county authorities and found to be a person entitled to medical aid, then the county physician should give emergency aid even though the person be incarcerated in a city jail. All other city prisoners are the responsibility of the city. However, the duty of a city is limited to emergency treatment and the county must assume the responsibility after application and investigation of the need for medical care if the prisoner is not able to pay for such care.

It is therefore my opinion that it is the duty of a city to provide emergency medical attention for a prisoner in a city jail except for a prisoner whose medical care has been assumed by the county prior to incarceration in the city jail.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.