

State Prison — District Judges — County Jails — Jails — Prisoners.

A district judge may not order a person confined to the state prison pending proceedings against him on a criminal charge.

A. B. Middleton, Esq.,
Warden of Montana State Prison,
Deer Lodge, Montana.

December 27, 1928.

My dear Mr. Middleton:

You have requested my opinion whether the district judge of one county has authority to order a person accused of crime to be detained in the state penitentiary while awaiting trial in the district court, and when the prisoner has not been able to furnish bonds.

Section 12474 R.C.M. 1921 authorizes the district judge to designate the jail of a contiguous county for the confinement of a prisoner when there is no jail in the county or when the jail becomes unfit or unsafe for the confinement of prisoners, and Section 12459 authorizes the confinement of persons in a county jail who have been sentenced to confinement in the state prison when the state prison is insufficient to contain the prisoners.

I find no statute, however, that authorizes the district judge or anyone else to order a person accused of crime to be confined in the state prison pending the trial of the charge against him.

It is, therefore, my opinion that a district judge may not order a person accused of crime to be confined in the state prison when there is no jail in the county in which the accused is awaiting trial or where the jail situated in that county is unfit or unsafe, but that the authority is limited to confining the accused in the jail of a contiguous county.

Very truly yours,
L. A. FOOT,
Attorney General.