

Opinion No. 33.

County Jail—City Prisoners, Confinement in County Jail—Police Magistrate—County Commissioners.

HELD: 1. Rights and limitations on right of city police magistrate, as ex-officio justice of the peace, to order prisoners confined in county jail are set forth.

2. The city officials and the county commissioners may contract for the care and confinement of city prisoners in the county jail.

January 30, 1935.

Mr. William R. Taylor
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This will acknowledge receipt of your letter of January 10, requesting our opinion on the following questions:

1. Is it the duty of the sheriff to confine prisoners in the county jail who have been convicted by a city police magistrate of violating a city ordinance and who have been committed by the police magistrate to the county jail?

2. If the answer to the first question is in the affirmative, is the county or the city liable for the care and cost of maintenance of such prisoners in the absence of any agreement therefor between the city council and the board of county commissioners?

3. If the answer to the first question is in the negative, may the city council and the county commissioners execute a valid contract whereby the county agrees to accept such prisoners and care for them and the city agrees to pay for the cost of their maintenance.

4. Is it the duty of the sheriff to confine prisoners in the county jail who have been convicted before the city police magistrate, sitting as an ex officio justice of the peace, as provided for by Section 5088, Revised Codes of 1921, of violating a penal law of the State of Montana and committed by him to the county jail? If it is, at whose expense?

Section 5039, R. C. M. 1921, as amended, provides: "The city or town council has power: * * * 5. To build or hire all necessary buildings for the use of the city or town, and to heat and light the same. 35. 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. 52. To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law, and with the consent of the board of county commissioners. 53. To erect and organize a workhouse in or near a city or town; and any person who fails or neglects to pay any fine or costs imposed on him by any ordinance may be committed to the workhouse until such fine is paid. 58. To make regulations authorizing the police of the city or town to make arrests of persons charged with crime, within the limits of the city or town and within five miles thereof, and along the line of water supply of the city or town. 63. To make any and all contracts necessary to carry into effect the powers granted by this title, and to provide for the manner of executing the same."

Other subdivisions of the same section provide that the city may enact proper ordinances prohibiting certain acts and punishing persons for violating such ordinances. Prosecutions for such offenses are brought in the name of the city. (Section 5089, (1) R. C.

M. 1921); State ex rel. Streit v. Justice Court, 45 Mont. 375, 123 Pac. 405, 48 L. R. A. (n. s.) 156.)

Section 5088, R. C. M. 1921, invests the police court with concurrent jurisdiction with the justices of the peace over certain public offenses committed within the county. The police judge may act as a committing magistrate (Sections 5091, 11619 and 11786) and is given the power to commit such persons to the custody of the sheriff (11787).

Other statutory provisions which are pertinent here, include Section 10725:

"Punishment of Misdemeanor, When Not Otherwise Described. Except in cases where a different punishment is prescribed by this code, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months, or by a fine of not exceeding five hundred dollars, or both."

Section 12466:

"A Jail Must be Built in Each County. There must be built or provided and kept in good repair in each county one common jail, at the expense of the county, at the county seat."

Section 12468:

"The common jails in the several counties of this state are kept by the sheriffs of the counties in which they are respectively situated and are used as follows:

(4) For the confinement of persons sentenced to imprisonment therein upon a conviction of crime."

Section 12482:

"Sheriff to Receive All Persons Duly Committed. The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing, and bedding, for which he shall be allowed a reasonable compensation, to be determined by the board of county commissioners, and, except as provided in the next section, to be paid out of the county treasury."

We believe that most of the questions you raised have been clearly answered by the Supreme Court of California in the case of *Sonoma County v. City of Santa Rosa*, 36 Pac. 810, wherein the court held: "Where a city recorder had the jurisdiction of a justice of the peace of offenses against the state laws and against city ordinances under the charter, which further provided that he might imprison persons adjudged guilty of the violation of city ordinances or state laws in the city prison or county jail, the city is liable for the board of persons committed to the county jail for violations of city ordinances, since the charter intends that prisoners shall be imprisoned in the city prison for violation of ordinances and in the county jail for violation of state laws.

"In such case, under Pen. Code. No. 1611 (of California, which is the same as Section 12482, R. C. M. 1921), providing that the sheriff must receive all persons committed to jail by competent authority, it is immaterial that the recorder had no authority to commit prisoners convicted by him to the county jail, if he had jurisdiction to convict them."

Subsequent opinions of that court have confirmed that decision. (*Carlisle v. Tulare County*, 49 Pac. 3; *ex parte Mayen*, 193 Pac. 813.)

Accordingly, after carefully considering the statutory provisions cited above and all of the authorities that we have been able to find, it is our opinion:

1. That a city police magistrate sitting as an *ex officio* justice of the peace is authorized to commit to the county jail persons guilty of crimes as provided in Section 5088 and the sheriff must accept and confine such persons as provided in the order of commitment. Section 12482, R. C. M. 1921. Under this Section (12482) the cost of maintaining such persons is a proper charge against the county. (*Pedigo v. Coombs*, 9 Ky. Law Rep. 816; *People v. Board of Supervisors*, 85 N. Y. Supp. 284; *City of Alexandra v. Board of County Commissioners*, (Ind.) 55 N. E. 31.)

2. That a city police magistrate exceeds his jurisdiction when he sentences to the county jail persons con-

victed before him of violating a city ordinance (Sections 1725 and 12468 (4), but the sheriff has no authority to ignore such commitment order unless it specifically shows on its face that the person ordered confined thereunder was convicted of violating a city ordinance and not a penal statute of the state. (Section 12482, R. C. M. 1921. *Sonoma County v. City of Santa Rosa*, *supra*; *Carlisle v. Tulare County*, *supra*; *City of Lexington v. Gentry*, 116 Ky. 528, 76 S. W. 404 (cited with approval in *City of Corbin v. Davis*, 236 S. W. 564); *City of Winchester v. Azbill*, 9 S. W. (2d) 51; *Mack v. City of Mayfield*, 39 S. W. (2d) 679.)

Where, however, the sheriff accepts a prisoner upon an order of commitment issued by a city police judge and the prisoner has been sentenced because of violating an ordinance of the city, the cost of feeding and caring for such prisoner is a proper charge against the city. (*Sonoma County v. City of Santa Rosa*, *supra*; *City of Indianapolis v. Woesner*, (Ind.) 103 N. E. 368; 50 C. J. 366.)

3. That the proper city officials and the board of county commissioners may execute a valid contract whereby the county agrees to confine in the county jail and care for persons convicted before a city police magistrate at a stipulated amount to be paid by the city. (Section 5039, R. C. M. 1921, as amended; Section 4465, as amended; *Hale v. Johnson*, 203 S. W. 949; *Parker v. Salmons*, 28 S. E. 681; *Spinney v. Town of Seabrook et al.*, 104 Atl. 248; *City of Indianapolis v. Woessner*, *supra*; *McQuillin's Municipal Corporations* (2d Ed.), Sections 1218 Note 7), 1961 and 2628 (Notes 6, 8, and 9). But see *Mason County v. Maysville*, 40 S. W. 691, 19 Ky. L. 400.) See also 50 C. J. 332.