Opinion No. 39

Prisoners — Cities and Towns — County Jails, City Prisoners Confined In

HELD: 1. Counties are obligated to build and maintain a county jail in good repair by Section 16-2801, R.C.M., 1947, and such county expense cannot be proportioned to any city.

2. In the absence of a contract made pursuant to Section 11-3336, R.C.M., 1947, a city which is operating under the commission-manager form of government is not authorized to make payment for services rendered by a matron at a county jail.

3. Cities or towns can make emergency expenditures under the provisions of Section 11-1409, R.C.M., 1947, in order to contract with the county for expenses to be incurred by the county in caring for city prisoners.

October 14, 1955

Mr. Jay M. Kurtz
County Attorney
Missoula County
Missoula, Montana

Dear Mr. Kurtz:

You have requested my opinion on

the following questions:

1. Would the laws of Montana prevent the Missoula City Council and the Missoula Board of County Commissioners from jointly employing a matron looking to the care and examination of female prisoners of both city and county?

2. If such an agreement relating to the employment of the matron, as aforesaid, is permissible, are there any particular provisions which should or must be incorporated therein?

3. Under and by virtue of Section 11-1409, R.C.M., 1947, may a City Council declare an emergency and appropriate funds to pay the city's proportionate share of the matron's salary, as aforesaid, until such time as a new budget can be adopted to provide for such proportionate share?

A review of early court decisions concerning the obligation of a city or town to pay the county for prisoners boarded in a county jail for violation of city ordinances indicates an almost universal rule that the city or town is not liable. See Norwich v. Hyde, 7 Conn. 529 (1829); Adams v. Wiscasset, 5 Mass. 328 (1809); Burton v. Erie County, 206 Penn. 570, 56 A. 40; People v. Board of Supervisors of Livingston County, 85 N.Y.S. 284, 89 App. Div. 152. However, the more recent decisions indicate that almost all states have passed some type legislation whereby cities can be required to reimburse counties or county sheriffs for such expenses. See City of Greenville v. Pridmore, 162 S.C. 52, 160 S.E. 144, wherein the court stated:

"Municipal authorities may, for any proper cause, sentence offenders against the laws of the municipalities to the county jail, and the county jailer is required to receive them, but the municipal authorities must pay the legal expenses for their care and confinement."

See also Mack v. City of Mayfield, 239 Ky. 420, 39 S.W. (2d) 679; Carlisle v. Tulare County, ...Cal....., 49 Pac. 5; and Sonoma County v. City of Santa Rosa, 102 Cal. 426, 36 Pac. 810. In the latter case the court, in holding that a city must bear their proportionate share for board of city prisoners confined in a county jail, stated:

"But a more conclusive reason for the construction we have given this provision of the charter is found in our frame of government, the policy of which is to localize, as far as can reasonably be done, not only the power, but the expense of government. The state is divided into counties, townships, and municipal corporations, with such limited legislative powers as are essential to each organization, and the expenses of such local governments, in all matters purely local, at least, are borne by such locality. The expense of the county government is borne by the whole county. But a city requires a government of its own. The laws necessary for the government of the people of the state at large lack something made necessary by the aggregation of large numbers of people. This lack is supplied by ordinances which are not required in the rural districts and small villages. The enforcement of these ordinances, and the preservation of order, require machinery not required elsewhere, the expense of which should, and under our well-defined policy, manifested clearly in our codes and statutes, as well as in the state constitution, is required to be borne by the city; and therefore, if the language of the charter here in question is doubtful, or capable of different interpretations it ought to be read in the light of our frame of government, and construed in harmony therewith, for we cannot presume that the legislature intended, after giving the city of Santa Rosa ample authority to provide means for defraying the expenses of her city government, that any part of it should be borne by the county at large . . . "

Section 11-954, R.C.M., 1947, in giving a city or town council power to confine their prisoners in a county jail states that:

"The city or town council has power: 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."

In the case entitled Scrovel v. Pennington County, et al., 66 S.D. 311, 282 N.W. 524, the Supreme Court of South Dakota, in interpreting a South Dakota statute (Section 6169, Rev. Codes S.D. 1919, sub-section 34) which provided in part that:

> "Every municipal corporation shall have power . . . 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."

made the following statement:

> "Influenced by the thought that the taxpayers of a municipality sustain a like relation to the county and contribute directly to the expense of maintaining the jail of their county, and by the fact that the Legislature has made no provision for payment to the county of any part of the expense incurred in maintaining the jail for the use of municipal prisoners, we are convinced that the Legislature intended to place this whole subject under the control of the board of county commissioners, and that it remains for them to say whether their consent to the use of a jail by a municipality shall be conditioned upon any payment to the county. In connection with this conclusion, it is noteworthy that the statutes do contain provision for the payment of county expenses by other counties and states, and by the United States."

Section 11-954, supra, in providing that city prisoners may be imprisoned in county jails, " . . . with the consent of the board of county commissioners" creates statutory authority for the city and county to contract for the payment of such expenses. However, as stated in the Sonoma case, supra, such contractural agreements must be logical and reasonable. Section 11-3336, R.C.M., 1947, given statutory authority for cities operating under a commission-manager plan to contract with counties for rent of county buildings or labor performed by county employees. The section states, however, that " . . . the compensation for such work shall be based upon additional cost to the county of its performance . . . " Under the rule of the Majors case (Majors v. County of Lewis and Clark, 60 Mont. 608, 201 Pac. 268), the city must contract directly with the sheriffs for cost of feeding prisoners. Section 16-2801, R.C.M., 1947, specifically makes it a county obligation and expense to build and keep in good repair a county jail. The rule is well stated in Mason County v. City of Maysville, 19 Ky. 400, 40 S.W. 691, wherein the court stated:

> "Jails are public property, provided at public expense for public uses, and in this state are usualy built by county courts out of funds in the county treasury which have arisen from taxes collected from the whole people of the county; and it seems to us clear that, unless they are restricted by law to the confinement of some particular class of prisoners, they become public prisons of the county and state, to be used for the safe custody of all classes of public offenders."

The only thing remaining for which the county could contract would be additional labor cost occasioned by the presence of city prisoners. Such costs would be determined under Section 11-3336, supra, by computing the " . . . additional cost to the county . . . " resulting from the presence of city prisoners. Further, this section contains the city's total authority in the matter of use of county employees, so that, in the absence of a contract, the city may not make any such payments. Applying the above laws and rules to your first question, the answer would be in the affirmative.

It is therefore my opinion that:

(1) Counties are obligated to build and maintain a county jail in good repair and this county expense cannot be proportioned to any city.

(2) In the absence of a contract made pursuant to Section 11-3336, R.C.M., 1947, a city which is operating under the commission-manager form of government is not authorized to make payment for services rendered by a matron at a county jail.

Section 11-1409, R.C.M., 1947, given statutory authority for a city or town to make an emergency expenditure when necessary for " . . . the immediate preservation of order or of public health . . . " Proper "preservation of order" necessitates imprisonment of people for violating city ordinances. If the city facilities are inadequate for such imprisonment, city prisoners may be confined in the county jail with "the consent of the County Commissioners" as provided by Section 11-954, supra. Where such "consent" is conditioned upon the city entering into a contract with the county whereby the additional expenses to be incurred by the county for the care of such prisoners are to be paid by the city under the provisions of Section 11-3336, supra, the city may declare an emergency expenditure under Section 11-1409, supra, to cover such anticipated emergency expense. Such an expenditure naturally could not include past expenses incurred inasmuch as no "emergency" would exist with respect to those expenses.

It is therefore my opinion that a city or town can make an emergency expenditure under the provisions of Section 11-1409, R.C.M., 1947, in order to contract with the county for expenses to be incurred by the county in caring for city prisoners.

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