

VOLUME NO. 37

OPINION NO. 10

CITY AND TOWNS - Payment for use of county jails; payment for radio dispatch services furnished police departments by sheriff's department; COUNTIES - Payment for use of county jail by city or town; payment for radio dispatch services furnished police department of city or town through sheriff's department; COUNTY JAILS - Payment for use by cities and towns; POLICE DEPARTMENTS - Payment for radio dispatch services furnished by sheriff's department; PRISONERS - Payment for board; SHERIFFS - Payment for radio dispatch services furnished by sheriff's department to police department of city or town; REVISED CODES OF MONTANA, 1947 - Sections 11-901, 11-929, 11-937, 11-954, 11-955, 11-965, 11-978, 11-1703, 11-1801, 12-482, 16-2802, 16-2803, 16-2818, 16-4904, 94-1104, 94-2101.

- HELD: 1. Pursuant to an interlocal contract executed between a city and town in the manner specified by section 16-4904, R.C.M. 1947, a county may charge a city for police radio dispatch service provided through the county sheriff's office to the police department of that city or town.
2. A county may charge a city or town for maintaining prisoners committed to county jail at the request of a city or town police department in the course of enforcing city or town ordinances.
3. A county may not charge a city or town for maintaining prisoners committed to county jail at the request of a city or town police department in the course of enforcing state laws.

25 March 1977

William A. Douglas, Esq.
Lincoln County Attorney
Lincoln County Courthouse
Libby, Montana 59923

Dear Mr. Douglas:

You have requested my opinion concerning the following question:

Can a county charge a city, located in the county, for police dispatch and jail services rendered to

that city's police department by the county sheriff's office?

Since two separate and distinct services are involved, I have answered your question in two parts. First, can the county charge a city for police dispatch services? Second, can the county charge a city for jail services rendered by the county sheriff's office to the city police department?

I.

Section 11-1801, R.C.M. 1947, requires every city and town in Montana to have a police department. Each city or town is responsible for the cost of maintaining its police department. See Quintin v. Edwards, 40 Mont. 287, 306, 309, 106 P. 695 (1910) and Gebhart v. City of Helena, 102 Mont. 27, 55 P.2d 671 (1936).

A radio dispatch service is an integral part of modern law enforcement and necessary for maintaining a police department. Expending money for radio dispatch service is clearly within a municipality's powers, as authorized by section 11-929, R.C.M. 1947, giving city and town councils power to maintain a "police telegraph"*; section 11-901, R.C.M. 1947, granting city and town councils power to make bylaws, ordinances, orders and resolutions necessary to execute their powers or obligations; and section 11-978, R.C.M. 1947, authorizing the appropriation and expenditure of money for municipal expenses. To my knowledge, there are no statutes requiring sheriff's offices, counties, or the state to maintain or fund police dispatch services for cities or towns. Therefore, responsibility for a dispatch service is with the city or town.

However, a police department of any city or town need not maintain its own, separate dispatch service. Section 11-965, R.C.M. 1947, empowers city or town councils to make such contracts as are necessary to carry out municipal powers and section 16-4904, R.C.M. 1947, permits cities and counties to enter into interlocal agreements for the performance of administrative services, activities, or under-

*Section 11-929, which allows for the maintenance of a police telegraph, was a part of R.C.M. 1921 in its original form. Thus, the enactment of the provision antedates the widespread utilization of radio dispatch and teletype.

takings which the contracting parties are authorized to perform. In the manner specified in section 16-4904, a county may contract with a city or town to provide the police department of such city or town with police dispatch services operated through the county sheriff's office.

II.

Provisions for county jails are set forth in section 16-2802.1 et seq., R.C.M. 1947. Section 16-2802.1 requires each county, either itself or jointly with another county, to build and maintain a jail. The purposes for which prisoners may be committed to jail are enumerated in section 16-2803.

Section 16-2818 specifies the persons a sheriff is required to receive and confine in the county jail and the agencies responsible for paying the board and expenses of prisoners:

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 submit claims for the actual expenses incurred to the board of county commissioners for their determination, and, except as provided in the next section, to be paid out of the county treasury. In the event said person is committed to jail by the highway patrol bureau, department of justice, the state of Montana shall upon claim presented for the county by the clerk and recorder pay into the county treasury of the county the actual expenses incurred or the sum of five dollars (\$5) per day, whichever is less, for each and every prisoner held in the county jail upon order or commitment of the highway patrol bureau or any department or officer thereof. For the purposes of this act, a day shall be defined as a twenty-four (24) hour period or portion thereof, beginning with the time of incarceration. Such claims upon the highway patrol bureau, department of justice, shall be paid to the various counties out of funds appropriated for that purpose. If in the opinion of the sheriff any prisoner, while detained, requires medication, medical services or hospitalization, the expense of the same shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner

is being detained. The county attorney shall initiate proceedings to collect any charges arising from such medical services or hospitalization for the prisoner involved if it is determined the prisoner is financially able to pay. (Emphasis added.)

Section 16-2818 requires a county, with enumerated exceptions, to pay for the board of prisoners committed to jail by competent authority. This provision does not define competent authority, nor does it provide for paying the cost of board for prisoners committed in excess of lawful authority.

A former Attorney General's Opinion provides a partial answer to the question of who may be committed and who is competent authority to commit to the county jail. The opinion is found in 16 OP. ATT'Y GEN. NO. 33 (1935). In that opinion, Attorney General Raymond T. Nagle considered whether city police judges had authority to make commitments to county jails and whether counties could charge cities for the board of prisoners sentenced to county jail by city police magistrates.

At the time of the opinion, a statute similar to section 16-2818, R.C.M. 1947, was in effect. That statute, section 12482, R.C.M. 1921, commanded the sheriff to receive and board all prisoners committed to county jail by competent authority and provided that the county pay the sheriff reasonable compensation for maintaining prisoners:

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.

Differences between section 16-2818 and section 12482 include changes in the method of computing the county's payments for maintaining prisoners and new provisions which shift the burden of paying for prisoners' board and expenses to other state agencies in certain situations, none of which are pertinent to the present inquiry.

Attorney General Nagle was not persuaded that section 12482, R.C.M. 1921, required sheriffs to receive every person

sentenced to county jail and counties to pay the cost of every prisoner committed to its jails by police magistrates. Citing other statutory provisions relating to the powers of cities and towns and the jurisdiction of police magistrates, he concluded that: 1) city police judges had authority to sentence persons convicted of crimes or offenses against the state to county jail and the cost of maintaining those prisoners was a proper charge against the county; 2) city police judges had no authority to sentence persons convicted of violating city ordinances to county jail, unless expressly authorized by the board of county commissioners; and 3) if a city police judge exceeded his authority by committing a prisoner to county jail for violations of city ordinances, the cost of boarding the prisoner would be a charge against the city. The important statutory provisions cited in support of the opinion included authority for cities and towns to punish violators of their ordinances, to build jails and workhouses for the confinement of persons convicted of violating ordinances, to use county jails with the consent of the county board of commissioners, and to give city police magistrates a bifurcated jurisdiction of violations of city ordinances and of certain offenses against the state. In support of its conclusions, the Opinion cited Sonoma County v. City of Santa Rosa, 36 P. 810 (1894), a decision in which the Supreme Court of California held that a statutory scheme similar to Montana's manifested a clear legislative intent for cities and towns to pay the cost of enforcing their own ordinances. The Court in Sonoma County said counties could charge cities for the board of persons sentenced to jail by city magistrates for violations of city ordinances because those commitments were illegal.

Under existing law city police judges continue to have dual jurisdiction of violations of city ordinances as well as limited jurisdiction of specified crimes and offenses against the state. Sections 11-602, 11-603, 11-1702, and 11-1703, R.C.M. 1947. City and town powers to establish their own jails and workhouses and to utilize county jails with the consent of the county board of commissioners remain unchanged.

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

The city or town council has power: To establish and maintain a jail for confinement of persons convicted of violating the ordinances of the city or town***.

Section 11-955, R.C.M. 1947, provides:

The city or town council has power: 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.

Section 11-954, R.C.M. 1947, provides:

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.

Montana statutes continue to manifest a clear intent that cities and towns provide for the enforcement of their local ordinances. Any statutory construction which would permit cities and towns the use of county jails, without county permission to enforce local ordinances would nullify section 11-954 requiring consent of the county board of commissioners. It cannot be presumed that the legislature intended to enact a useless or meaningless requirement. See Maxims of Jurisprudence, section 49-133, R.C.M. 1947 and also Townsend v. Davidson Inc., 166 Mont. 104, 531 P.2d 370 (1975). Section 11-954 must therefore be construed to allow counties to refuse the use of county jails for the confinement of persons accused or convicted of violating local ordinances, or to permit usage upon terms and conditions as a municipality and board of county commissioners can agree. If a city or town utilizes the county jail to enforce local ordinances without county consent, it does so without authority and should pay the cost thereof.

A city or town police department is a municipal agency and its policemen are employees of the city or town. Quintin v. Edwards, 38 Mont. 250, 265, 99 P. 940 (1908). However, Police are charged not only with local duties but also with public and general duties "pertaining to the observance and enforcement of general laws of the state, principally the penal and criminal codes." Quintin v. Edwards, id. Like police judges, they occupy a dual position. When enforcing state laws policemen are clothed with the authority of the state and the county jail is the place designated by statute for the confinement of persons detained in the course of enforcing state laws. Section 16-2803, R.C.M. 1947, provides:

***The common jails are used as follows:

1. For the detention of persons committed in order to secure their attendance as witnesses in criminal cases.
2. For the detention of persons charged with crime and committed for trial.
3. For the confinement of persons committed for contempt, or upon civil process, or by other authority of law.
4. For the confinement of persons sentenced to imprisonment therein upon a conviction of crime.

The definition of crime encompasses offenses committed against the state but not violations of local ordinances. Streight v. Justice Court, 45 Mont. 375, 381, 123 P. 405 (1912), sections 94-1104(2) and 94-2101(37). Section 16-2803 clearly authorizes commitment of persons detained or sentenced in the course of enforcing state criminal laws but stops short of authorizing commitment of persons detained or sentenced in the course of enforcing local ordinances. In the course of enforcing state laws, local police departments are authorized to use county jails and the cost must be paid by the county. Under section 16-2803 permitting use of a county jail where there is "other authority of law" allows a city to use a county jail for local purposes when consent of the county board of commissioners is obtained pursuant to section 11-954, R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

1. Pursuant to an interlocal contract executed between a city and town in the manner specified by section 16-4904, R.C.M. 1947, a county may charge a city for police radio dispatch service provided through the county sheriff's office to the police department of that city or town.
2. A county may charge a city or town for maintaining prisoners committed to county jail at the request of a city or town police department in the course of enforcing city or town ordinances.
3. County may not charge a city or town for maintaining prisoners committed to county jail at the request of a city or town police department in the course of enforcing state laws.

Very truly yours,

MIKE GREELY
Attorney General