

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 70

CITIES AND TOWNS - Payment for use of county jail;
COUNTIES - Payment for use of county jail by city or town;
PRISONERS - Payment for use of county jail by city or town;
MONTANA CODE ANNOTATED - Sections 3-11-102, 7-11-101 to 7-11-108, 7-32-2201, 7-32-2205, 7-32-4105, 7-32-4201, 7-32-4203;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 10 (1977);
REVISED CODES OF MONTANA, 1947 - Section 11-954.

- HELD: 1. A county may charge a city or town for maintaining prisoners committed to the county jail at the request of a city or town police department in the course of enforcing city or town ordinances.
2. A county is responsible for maintaining prisoners committed to the county jail at the request of a city or town police department in the course of enforcing state laws. On the other hand, state law requires the consent of the county commission if a city or town uses a county jail for confinement or punishment.
3. State law does not preclude a county and a city or town from entering into an interlocal agreement wherein the county may charge a city or town for maintaining prisoners committed to the county jail at the request of municipal authorities for violating either state laws or municipal ordinances.

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25 February 1988

Michael G. Alterowitz
Carbon County Attorney
Carbon County Courthouse
Red Lodge MT 59068

Dear Mr. Alterowitz:

You have requested my opinion on an issue which I have phrased as follows:

Is the conclusion in 37 Op. Att'y Gen. No. 10 (1977), concerning the propriety of a county charging a city for use of the county jail, affected by the fact that the city charges all defendants under state rather than city law and the fact that the city receives revenue generated by prosecutions in city court, whether they be charged under state statute or city ordinance?

Pursuant to section 7-32-2201, MCA, it is each county's duty to provide and maintain a jail. This has long been the case. It has also long been the duty of the sheriff or other competent official to receive those committed to jail. § 7-32-2205, MCA. Cities and towns, on the other hand, are authorized (but not required) to establish and maintain jails for the confinement of persons who violate municipal ordinances. § 7-32-4201, MCA.

However, pursuant to section 7-32-4105, MCA, it is the duty of municipal police to enforce state law as well as city ordinances. Pursuant to section 3-11-102, MCA, city judges have jurisdiction concurrent with that of justices of the peace over all misdemeanors. Thus, city police and city judges may validly commit persons to jail for violation of state law as well as city ordinances.

There is no statutory provision regarding the maintenance of a city or town jail for prisoners charged by a city or town with violation of state law. Thus, county jails are the only required places of confinement for violations of state law.

Your question concerns the use by a city of a county jail and focuses at least somewhat on the revenue generated by city prosecutions of state law. The latter consideration is not determinative of whether the county may charge the city for jail costs. As stated above, a

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city may prosecute violations of state law, but is not required to maintain a jail for detainment of state law violators. Rather, the county has the responsibility to maintain such a jail. The city has the power to use the county jail, pursuant to section 7-32-4203, MCA, which states:

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. [Emphasis supplied.]

In 37 Op. Att'y Gen. No. 10 at 38 (1977) I considered the language of section 7-32-4203, MCA (then section 11-954, R.C.M. 1947), and concluded that, while a county may charge cities and towns for maintaining prisoners who are incarcerated for violating municipal ordinances, the counties are responsible for paying the costs of maintaining prisoners who are incarcerated at the request of municipal police for violations of state law.

However, I find nothing in the statutes that would preclude a city or town and a county from entering into an interlocal agreement, pursuant to sections 7-11-101 to 108, MCA, regarding jail use. While state law requires that county jails receive all persons committed for violating state laws, a county and a city or town may enter into an interlocal agreement that allows the county to charge the city or town for maintaining prisoners committed by municipal authorities for violating either state laws or municipal ordinances. The terms and conditions of that agreement must be arrived at by mutual consent, within the limits established by law.

THEREFORE, IT IS MY OPINION:

1. A county may charge a city or town for maintaining prisoners committed to the county jail at the request of a city or town police department in the course of enforcing city or town ordinances.
2. A county is responsible for maintaining prisoners committed to the county jail at the request of a city or town police department in the course of enforcing state laws. On the other hand, state law requires the consent of the county commission if a city or town uses a county jail for confinement or punishment.

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3. State law does not preclude a county and a city or town from entering into an interlocal agreement wherein the county may charge a city or town for maintaining prisoners committed to the county jail at the request of municipal authorities for violating either state laws or municipal ordinances.

Very truly yours,

MIKE GREELY
Attorney General