

JAILS  
CITIES, TOWNS, AND VILLAGES  
COUNTIES  
SHERIFFS  
COOPERATIVE AGREEMENTS

A city and a county can jointly erect a common jail. A county can house city prisoners and charge the city therefor. The governing body of a county or the sheriff can contract with a town to use the town's jail.

February 22, 1968



OPINION NO. 267 - (1967)  
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Honorable Henry A. Keeler  
Prosecuting Attorney of  
Pettis County  
Courthouse  
Sedalia, Missouri

Dear Mr. Keeler:

We are in receipt of your request for an opinion, dated May 8, 1967, which is as follows:

"Would you be kind enough to furnish me with an opinion as to whether Pettis County and the City of Sedalia could jointly erect a common jail, with funds coming from each of the aforementioned units. If the County were to erect a jail, could they properly house City prisoners therein and charge the City therefor? If the City should erect a jail, could they house County prisoners therein and charge the County therefor?"

Your opinion request contains three separate questions:

1. If the County erects a jail, could they properly house City prisoners and charge the City therefor?
2. Can a City and a County jointly erect a common jail?

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3. If the City should erect a jail, could they house County prisoners and charge the County therefor?

If a county erects a jail, it can properly house city prisoners and charge the city therefor. Section 98.010, RSMo 1959, expressly provides that if any city, town, or village has no suitable and safe place of confinement, the defendant may be committed to the common jail of the county by the mayor or police judge of such city, and it shall be the duty of the sheriff, if he has room, to receive and safely keep such prisoner. The city shall pay the board of such prisoner at the same rate allowed by law to the sheriff for keeping other prisoners in his custody.

A city and county can jointly erect a common jail. Section 71.300, RSMo 1959, expressly provides that an incorporated city or town and the county within which the city or town is located may erect and maintain jails for their joint use. When a city and county acquire real estate, title must be held as tenants in common, Section 70.240, RSMo 1959.

There is no statute expressly providing that a county prisoner can be confined in a city jail.

Article VI, Section 16 of the Constitution of Missouri provides as follows:

"Any municipality or political subdivision of this state may contract and cooperate with other municipalities or political subdivisions thereof, or with other states or their municipalities or political subdivisions, or with the United States, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law."

Such section authorizes the legislature to pass laws respecting co-operative agreements for a common service. The law passed under this section states that the subject and purpose of any contract or cooperative action shall be within the scope of the powers of such municipality or political subdivision.

"Any municipality or political subdivision of this state, . . . may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, . . . for the planning, development, construction, acquisition or operation of any public improvement or facility,

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or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision. If such contract or cooperative action shall be entered into between a municipality . . . and an elective or appointive official of another . . . political subdivision, said contract or cooperative action must be approved by the governing body of the unit of government in which such elective or appointive official resides." Section 70.220, RSMo 1959.

This office has held that the "common service" that may be contracted for includes any administrative service that the municipality or political subdivision has power to provide separately. Cantrell, Opinion No. 213, May 15, 1963; Holman, Opinion No. 230, March 29, 1966.

Providing an adequate jail is an administrative service. Therefore, it is a proper subject for a cooperative agreement.

Section 221.010, RSMo 1959, provides that a common jail shall be kept and maintained in each county of this state at the county seat. Section 77.140, RSMo 1959, provides that a third class city can maintain a jail. Therefore, a contract providing that a county can use a city jail is within the scope of the powers of Sedalia and Pettis County. The terms of the contract are for the parties to agree upon.

If the county court has contracted with a city to provide a jail, then that is the county jail. If the jail is insufficient, the sheriff has two alternatives provided by statute. The authors of Section 221.230 foresaw that in some counties there will be an insufficient jail or no jail, despite the requirement of Section 221.010. In that situation the sheriff decides where a prisoner will be jailed. Section 221.230 permits a sheriff to commit persons in his custody to the nearest jail of some other county and make it obligatory for the sheriff of some other county to receive such persons. The sheriff also has the alternative of employing a guard sufficient for the safekeeping of prisoners charged with a felony in his own county. Section 221.200 (2), RSMo 1959.

A sheriff can contract with a town to keep prisoners in a city jail. If the sheriff so contracts, this contract must be approved by the governing body of the county. Section 70.220, RSMo 1959.

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The sheriff is responsible for prisoners committed to his custody and he is responsible for the conduct of a jailor he may appoint, Section 221.020, RSMo 1959. The Missouri Supreme Court has held that a suit may be maintained for breach of the sheriff's official bond on the grounds that the sheriff breached his duty to use ordinary care to prevent harm to prisoners in his custody, Miller v. Ousley, 52, 264, Supreme Court of Missouri, En Banc, September Session, 1967. This responsibility continues if the sheriff incarcerates prisoners in his custody in a city jail and a county cannot divest him of this responsibility by contract.

CONCLUSION

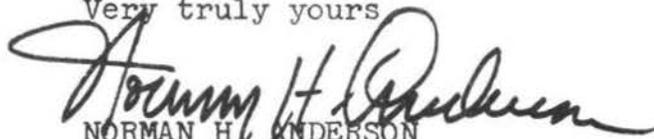
A city and a county can jointly erect a common jail.

A county can house city prisoners and charge the city therefor.

The governing body of a county or the sheriff can contract with a town to use the town's jail.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Deann Duff.

Very truly yours

  
NORMAN H. ANDERSON  
Attorney General