

STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 83- 93

L. Stephen Garlow  
City Attorney  
P.O. Box 875  
Parsons, Kansas 67357

Re: Counties and County Officers--Jails--City Prisoners;  
Compensation for Maintenance

Synopsis: Neither a sheriff, nor a board of county commissioners, may, as a precondition to receiving prisoners committed to a county jail by a city, require that the city covenant to hold the county and sheriff harmless, and to indemnify the county and sheriff for any civil liability arising out of the commitment of city prisoners to the county jail.

Pursuant to the provisions of K.S.A. 19-1930, cities are liable for the expenses of housing city prisoners in the county jail, including medical expenses of such prisoners. Kansas Attorney General Opinion No. 78-66 is affirmed. Cited herein: K.S.A. 19-101a (as amended by Section 1 of 1983 Senate Bill No. 302), 19-1930.

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Dear Mr. Garlow:

As city attorney for the city of Cherryvale, you request our interpretation of K.S.A. 19-1930. Specifically, you indicate that the city of Cherryvale has no city jail, and pose the following questions relating to commitment of city prisoners to the Montgomery County jail:

"1. May the Montgomery County Sheriff and the Montgomery County Board of Commissioners require the City of Cherryvale to covenant to hold the county and sheriff harmless, and indemnify the county and sheriff for any civil liability arising out of the committment of city prisoners to the county jail, pursuant to K.S.A. 19-1930?

"2. May the Montgomery County Sheriff and Montgomery County Board of Commissioners require the City of Cherryvale to assume liability for all expenses incurred by the sheriff and the county in providing necessary medical services for prisoners committed to the county jail by the city?"

In response to your first question, K.S.A. 19-1930 provides, in pertinent part, as follows:

"(a) The sheriff or the keeper of the jail in any county of the state shall receive all prisoners committed to the sheriff's or jailer's custody by the authority of the United States or by the authority of any city located in such county and shall keep them safely in the same manner as prisoners of the county until discharged in accordance with law. The county maintaining such prisoners shall receive from the United States or such city compensation for the maintenance of such prisoners in an amount equal to that provided by the county for maintenance of county prisoners and provision shall be made for the maintenance of such prisoners in the same manner as prisoners of the county. The governing body of any city committing prisoners to the county jail shall provide for the payment of such compensation upon receipt of a statement from the sheriff of such county as to the amount due therefor from such city.

. . . .

"(c) If any sheriff or jailer neglects or refuses to perform the services and duties

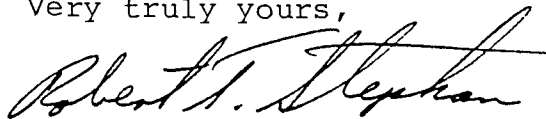
L. Stephen Garlow  
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required by the provisions of this act, the sheriff or jailer shall be subject to the same penalties, forfeitures and actions as if the prisoners had been committed under the authority of this state." (Emphasis added.)

The above-quoted statute requires, without exception, that the Montgomery County Sheriff receive all prisoners committed to his custody by the city of Cherryvale. The sheriff may not refuse to receive a city prisoner committed to his custody, and is not authorized to attach preconditions to receiving city prisoners who are so committed. Furthermore, the above-quoted statute is part of an enactment (L. 1981, ch. 350, §2) which is uniformly applicable to all counties, and a county may not, therefore, exempt itself from said statute by the exercise of county home rule powers. See K.S.A. 19-101a, First (as amended by Section 1 of 1983 Senate Bill No. 302). Therefore, it is our opinion that neither the Montgomery County Sheriff, nor the Board of County Commissioners of Montgomery County, may, as a precondition to receiving prisoners committed to the county jail by the city of Cherryvale, require that the city covenant to hold the county and sheriff harmless, and to indemnify the county and sheriff for any civil liability arising out of the commitment of city prisoners to the county jail.

In regard to your second question, this office opined in Kansas Attorney General Opinion No. 78-66 that K.S.A. 19-1930 imposes liability upon cities for the expenses of housing city prisoners (i.e., prisoners arrested for violations of city ordinances), including medical expenses of such prisoners. We adopt said opinion as our response to your second question, and enclose a copy of the same for your review.

Very truly yours,



ROBERT T. STEPHAN  
Attorney General of Kansas



Terrence R. Hearshman  
Assistant Attorney General

RTS:BJS:TRH:jm