

STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 85

Ivan D. Krug
Rush County Attorney
711 Main
LaCrosse, Kansas 67548

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

Synopsis: If the LaCrosse police officers are arresting a person for violating K.S.A. 1990 Supp. 8-1567 or any other state law, Rush county is responsible for any of the jail expenses incurred. The city of LaCrosse is responsible for the jail fees and costs incurred if the prisoner was arrested for violation of city ordinances. Cited herein: K.S.A. 19-1916; K.S.A. 1990 Supp. 19-1930.

* * *

Dear Mr. Krug:

As Rush county attorney you request our opinion regarding whether Rush county can require the city of LaCrosse to pay for jail expenses incurred when people who are arrested by LaCrosse police officers are held in the Ellis county law enforcement center. You explain that the people are charged in Rush county but are transferred to Ellis county since Rush county does not have a jail. Specifically, you request our opinion as it relates to driving under the influence (DUI) cases.

K.S.A. 1990 Supp. 19-1930 states 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."

In Attorney General Opinion No. 78-66 and 83-93 this office held that the above quoted statute "imposes a liability upon cities for the expenses of housing city prisoners."

K.S.A. 19-1916 provides that

"Any committing judge of the district court of any county in which there is no sufficient jail may order any person whom they may lawfully order to be committed to prison to be sent to the jail of the county nearest having a sufficient jail; and the sheriff of such nearest county shall, on exhibit of the order of such judge, which order shall have endorsed thereon a statement that there is no sufficient jail in the county from whence it issued, receive and keep in custody in the jail of his or her county the prisoner ordered to be committed as aforesaid, at

the expense of the county from which such person was sent; and the said sheriff shall, upon the order of the committing judge of the district court, redeliver such person when demanded."

Based on these statutes the court in Wesley Medical Center v. City of Wichita, 237 Kan. 807 (1985) stated that the legislative intent of these statutes is

"that the cost of maintenance of a prisoner, including medical expenses, should not be placed upon the county whose jail has physical custody of the prisoner, but on the governmental entity whose laws have been violated and under whose authority the person is actually being held as a prisoner."

The Wesley court went on to conclude the following:

"We hold that so long as an offender is arrested for violation of a state law and in due course is charged with a state crime and delivered to the county jail for confinement, the medical and other incidental expenses incurred as a consequence of and following his arrest, and until his transfer to such facility, are chargeable to the county. We further hold that a county's liability for charges and expenses for safekeeping and maintenance of the prisoner, including medical expenses, does not depend on which police agency happens to be called to the scene of the alleged crime or whether such expenses were incurred before or after he is placed in a county jail. The controlling factor is that the prisoner was arrested and subsequently charged with violation of a state law." (Wesley, supra, p. 815)

You have informed us that pursuant to K.S.A. 1990 Supp. 8-1567(n) the city of LaCrosse has a DUI ordinance. Therefore, when the LaCrosse police officers are arresting individuals for violations of the city's DUI laws the municipal court has jurisdiction over them pursuant to K.S.A.

12-4104 and the city attorney or assistants shall prosecute these individuals pursuant to K.S.A. 12-4110.

As was stated in Attorney General Opinion No. 84-32:

"[a] county attorney cannot prosecute violations of a city ordinance, in that such violations do not arise under the laws of this state. State ex rel. v. Vandyne, 159 Kan. 378, 384 (1945). Also, while a county attorney has discretion in the prosecution of criminal violations, such discretion has been defined as that which:

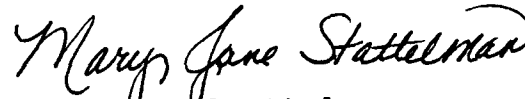
'permits him to refrain from prosecuting whenever he, in good faith and without corrupt motives or influences, thinks that a prosecution would not serve the best interests of the state, or that, under the circumstances, a conviction could not be had, or that the guilt of the accused is doubtful or not capable of adequate proof.' (Citations omitted). State ex rel. v. Richardson, 229 Kan. 234, 240 (1981)."

Therefore, if the LaCrosse police officers are arresting a person for violating K.S.A. 1990 Supp. 8-1567 or any other state law, Rush county is responsible for any of the jail expenses incurred. The city of LaCrosse is responsible for the jail fees and costs incurred if the prisoner was arrested for violation of city ordinances.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary Jane Stattelmann
Assistant Attorney General