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June 3, 2014

ATTORNEY GENERAL OPINION NO. 2014- 12

David Heger  
Miami County Counselor  
201 S. Pearl, Suite 200  
Paola, KS 66071-1074

Re: Counties and County Officers—Jails—Jail at County Seat

Synopsis: K.S.A. 19-1901 requires every county to maintain a county jail at the county seat. For purposes of this statute, the term “jail” should be given its ordinary meaning. Nothing in K.S.A. 19-1901 requires that the jail be a “full service jail.” Cited herein: K.S.A. 19-101a; 19-1901; 19-1923.

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Dear Mr. Heger:

As County Counselor for Miami County, you seek our interpretation of K.S.A. 19-1901, which provides: “There shall be established and kept *at every county seat* by authority of the board of county commissioners, at the expense of the county, a jail for the safe-keeping of prisoners lawfully committed.”<sup>1</sup> You ask whether the term “jail” in this statute refers to what you call a “full service jail,” that is “a corrections facility that operates seven days a week, 24 hours a day and serves as a booking center for all arrestees brought to the facility by local law enforcement agencies.” Miami County would like to build a full service jail in a city other than the county seat and use the existing jail (which is located in the county seat) as holding cells for prisoners going to and from court. You wish to know whether this would satisfy the requirements of K.S.A. 19-1901.

Because the term “jail” is not defined for purposes of K.S.A. 19-1901, we look to the ordinary meaning of the term.<sup>2</sup> One dictionary describes a jail as “a place of confinement for persons held in lawful custody; specifically . . . such a place under the

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<sup>1</sup> Emphasis added.

<sup>2</sup> See, e.g., *Cady v. Schroll*, 298 Kan. 731, 739 (2014).

jurisdiction of a local government (as a county) for the confinement of persons awaiting trial or those convicted of minor crimes.”<sup>3</sup> Another dictionary similarly defines the term to mean “a place for the confinement of people accused or convicted of a crime.”<sup>4</sup> Holding cells for prisoners going to and from court would meet these definitions of jail, as they would be used to confine individuals awaiting trial or other court appearances. Nothing in these definitions requires that a “jail” must operate full time or serve as a booking center for arrestees brought in by local law enforcement. Interpreting K.S.A. 19-1901 to mandate that counties maintain a “full service jail” in the county seat would require reading words into the statute, something that courts are not allowed to do.<sup>5</sup>

You note that another statute, K.S.A. 19-1923, authorizes the county commissioners of any county to construct “in such area other than the county seat of such county, *a jail or holdover*, for the use of such county and area cities in which such jail shall be erected.”<sup>6</sup> This statute’s use of the phrase “jail or holdover” suggests that a “jail” is something more than a holding facility. But these two statutes were not enacted at the same time — the statute now codified as K.S.A. 19-1923 was originally enacted in 1911, over forty years after the statute now codified as K.S.A. 19-1901.<sup>7</sup> Thus, we are not convinced that the Legislature intended the word “jail” for purposes of K.S.A. 19-1901 to mean something other than the term as ordinarily defined.

We also recognize the broad home rule powers given to counties under Kansas law. K.S.A. 19-101a authorizes a board of county commissioners to “transact all county business and perform all powers of local legislation and administration it deems appropriate,” subject to certain limitations. Thus, if there were no statutory restrictions, counties would be free to determine what kind of jail, if any, to maintain in the county seat. One restriction on county home rule is that counties are subject to all acts of the Legislature that apply uniformly to all counties.<sup>8</sup> And since K.S.A. 19-1901 is uniform to all counties, counties are required to maintain some type of jail in the county seat. But in the absence of any textual indication that this must be a “full service jail,” we believe counties retain home rule authority to determine what type of jail they wish to maintain, consistent with the ordinary meaning of term. They may choose to keep a “full service jail” at the county seat, or they may choose to maintain some other kind of jail.

In conclusion, our opinion is that K.S.A. 19-1901 does not require a county to maintain a “full service jail” at the county seat. Instead, we believe the term “jail” should be given its ordinary meaning, which includes the type of holding facility you describe.

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<sup>3</sup> “Jail.” Merriam-Webster.com. <http://www.merriam-webster.com/dictionary/jail> (accessed May 30, 2014).

<sup>4</sup> “Jail.” Oxford Dictionaries. Oxford University Press. <http://www.oxforddictionaries.com/definition/english/jail?q=jail> (accessed May 30, 2014).

<sup>5</sup> See, e.g., *Bd. of County Comm’rs of Leavenworth County v. Whitson*, 281 Kan. 678, 685 (2006).

<sup>6</sup> Emphasis added.

<sup>7</sup> G.S. 1868, ch. 53.

<sup>8</sup> K.S.A. 19-101a(a)(1).

David Heger  
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Sincerely,

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Assistant Attorney General

DS:AA:DC:sb