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April 5, 1991

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THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Sheriff's Requirement to Accept Prisoners

Dear Mr. Douglas and Mr. Jones:

You have asked for an opinion regarding whether a jailor may refuse to accept into the county jail a person who has been arrested by a police officer and who appears to be injured. Apparently, it has been the county's position that no arrestee is to be accepted if it appears that the person is injured, unless the arresting officer produces a document from a physician certifying his fitness for confinement. The authority for this position is found in § 15.04 of the Idaho Sheriffs' Association Jail Standards, which standards have been adopted as a Kootenai County ordinance. You have asked whether this section enables a jailor to require a police officer to transport an arrestee to a hospital. The issue apparently came to a head when a city officer tried to drop off an injured prisoner at the county jail, the jailor refused to take the individual, and the officer transported the prisoner to the hospital, where the prisoner escaped because no one was guarding him.

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It is my understanding, from talking to both of you, that an underlying question is which agency must pay for the medical care of a person who is deemed to be too sick or injured to be housed in the jail. Apparently, the argument has been made that because the sheriff has no duty to accept prisoners who fit this category, the arresting agency must absorb the costs of medical treatment for the arrestee.

In 1984, the attorney general issued an opinion regarding the cost of housing prisoners in the county jail who have been arrested by city officers. In forming an opinion, the attorney general discussed the duty of the county sheriff to accept prisoners from city policemen and stated:

Idaho Code § 20-612 also makes it abundantly clear that the sheriff must accept all prisoners: "The sheriff must receive all persons committed to jail by competent authority." Despite the numerous code sections cited above showing that the sheriff has an affirmative duty to house prisoners arrested by other agencies, the dispute as to costs may lead some persons to quibble over the words "committed . . . by competent authority." The argument might be made that, all of the other code provisions notwithstanding, a sheriff has not duty to accept a prisoner from another agency until the prisoner has been committed by a court. Without lengthy exegesis, this position has no merit. It is true that the word "committed," while nowhere defined in the code, probably does have reference to the order of a court confining a prisoner. However, prisoners are not detained only on court order. Idaho law gives city police officers and state police officers authority to arrest criminals in the same manner as the sheriff. Idaho Code §§ 19-4804, 50-209. The process of confinement of criminal defendants is commenced in most cases by lawful arrest, which means "taking a person into custody in a case and in the manner authorized by law." Idaho Code §§ 19-601, 19-603. Moreover, in a probable cause arrest a person is charged before he is committed by any court process. It would be unreasonable for a peace officer to have the statutory authority to arrest and take into custody a law violator, but not have the authority to confine the person in jail until the person is committed by a

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court process, which may be from 24 to 72 hours after arrest. Idaho Criminal Rule 5(b), Idaho Code §§ 18-702, 19-615, 19-515. (Moreover, such an interpretation of Idaho Code § 20-612 would not only preclude cities and other agencies from housing prisoners in the county jail until committed by a magistrate, but it would also preclude the sheriff from housing his own prisoners there until committed by a judge! The absurdity of this logic is patent.) Police officers having the implied powers necessary in order to accomplish their lawful duties, also have the power to confine prisoners in the county jail to await first appearance without warrants or orders of confinement.

Where officers are entrusted with general powers to accomplish a given purpose, such powers include as well all incidental powers or those that may be deduced from the ends intended to be accomplished.

Cornell v. Harris, 60 Idaho 87, 93, 8 P.2d 498 (1939).

In Lansdon v. Washington County, 16 Idaho 618, 102 P. 344 (1909), the Idaho Supreme Court upheld a sheriff's exercise of implied powers in a case analogous to the question presented here. Having no secure facility for housing a seriously ill, female defendant, the sheriff of Washington County posted a guard outside of her hospital room. The issue was stated and answered as follows:

Can the sheriff, when the necessity arises, appoint guards and employ assistants to aid him in performing the duties of his office, and will the expenses incurred thereby become a county charge? . . . Under such circumstances, in addition to the general authority expressly given by the statute to the sheriff, he is also by implication given such additional authority as is necessary to carry out and perform the duties imposed upon him by law. . . . In other words, the express authority given to the officer by statute carries with it by implication such

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additional authority as is necessary to efficiently execute the express authority given.

Lansdon, 16 Idaho at 623-24, 102 P. at 346.

That the sheriff is to receive prisoners before they are formally committed to jail by court order is clear from Idaho Code § 50-302A which gives a city the right to use its county's jail for "persons who are charged with" a law violation. This statute is silent as to any requirement that the charged person be received into jail on a court commitment.

Finally, and most significantly, giving Idaho Code § 20-612 the erroneous reading suggested above, would bring it into conflict with another statute, the command of which is unequivocal and the violation of which is punishable by imprisonment:

Every sheriff, coroner, keeper of a jail, constable or other peace officer, who wilfully refuses to receive or arrest any person charged with criminal offense is punishable by fine not exceeding Five thousand (\$5,000) and imprisonment in the county jail not exceeding one (1) year.

Idaho Code § 18-701.

In 1986, a sharply divided Idaho Supreme Court held that Idaho Code § 20-612 requires a sheriff to pay for all expenses, including medical bills, incurred in housing an arrestee, for any case involving a violation of state law. The court held that the county could not seek reimbursement from the city for those arrestees who were arrested by city police officers. County of Bannock v. City of Pocatello, 110 Idaho 292, 715 P.2d 962 (1986).

From these authorities, it can be seen that (1) a sheriff has an absolute duty to accept arrestees, and (2) a sheriff has the duty to pay the costs of caring for all arrestees, except for those held for violations of city ordinances.

The Idaho Jail Standards require that a jail provide basic medical care to all prisoners, and mandate that medical screening

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of incoming arrestees take place. Further, the jail is to have procedures in place to deal with emergencies, and must have the services of an on-call physician. However, the standards also contain the following provision:

Admission - 15.04

If any inmate shows signs of any illness or injury, or is incoherent, the inmate shall not be admitted to the facility until the arresting officer or committing officer has secured written documentation from facility medical personnel or a physician of examination, treatment, and fitness for confinement.

It is the opinion of this office that this section of the standards conflicts with Idaho law and cannot stand. Under art. 12, § 2 of the Idaho Constitution, county ordinances may not conflict with the general laws of the state. In such cases, the ordinance must always give way. State v. Clark, 88 Idaho 365, 399 P.2d 955 (1965). In this case (although it may not have been the intent of the drafters of the standards or the commissioners who promulgated the ordinance), the section clearly creates a loophole whereby a jailor may refuse to accept a prisoner based upon his subjective analysis of the state of the prisoner's health. This is contrary to state law regarding mandatory acceptance of prisoners.

For the same reasons, the jail standards cannot be used to circumvent a sheriff's duty to pay for the costs of medical care for a prisoner.

This is not to say that the jail standards as a whole are defective, or that the Kootenai County ordinance is entirely unconstitutional. Where an unconstitutional portion of an ordinance is not essential to the purpose and completeness of the ordinance as a whole, such portion will be treated by the courts as severable, thereby rendering the remainder constitutional. Voyles v. City of Nampa, 97 Idaho 597, 548 P.2d 1217 (1976).

It is of course in everyone's interest to ensure that an ill or injured arrestee is cared for immediately. Clearly, if a city officer has a person under arrest who is in immediate need of medical attention, an ambulance should be called or other actions must be taken to treat the person. Not only is this the humane course of action, it will guard the city against liability.

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However, the fact that such action is initiated by the city police officer will not relieve the sheriff from providing guards for the prisoner and from paying for the cost of medical care.

If, on the other hand, a city officer delivers such a prisoner to the door of the county jail, a jailor may not refuse to accept the person on the ground that the officer does not have a certification from a physician. Under such circumstances, the jailor must accept the prisoners and take whatever steps are appropriate to provide necessary medical treatment.

Yours very truly,



MICHAEL KANE
Deputy Attorney General
Chief, Criminal Law Division

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