

January 13, 1993

Mr. Stephen V. Southwick
Lincoln County Sheriff
P.O. Box 458
Shoshone, ID 83352

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

Dear Sheriff Southwick:

By letter dated November 20, 1992, you requested an opinion from this office regarding the responsibility of Lincoln County in relation to persons arrested by city police officers. According to your letter, Lincoln County no longer maintains a full-time jail facility and houses its prisoners at the Gooding County Jail under contract. Soon, due to reductions in available space in the Gooding County Jail, Lincoln County will have to begin housing prisoners at the Cassia County Jail.

Lincoln County does have a detention facility for booking and holding persons until they can be transported to Gooding County. Your questions relate to the county's responsibility to detain and transport persons arrested by city police officers within the county. In this regard, you have raised several questions which I will address in turn.

Question No. 1:

Do I as Sheriff have the responsibility to accept city prisoners at the Sheriff's Office even when I do not have a jail or holding facility, but use a jail in another county?

Answer:

Yes. County sheriffs do have the responsibility to accept persons arrested by city police officers. Initially, it should be noted that municipalities in Idaho have no statutory responsibility to maintain jail facilities. To the extent that a municipality may maintain a jail, the persons subject to incarceration in a city jail is limited. Idaho Code § 50-302A provides:

Any person charged with or convicted of violation of a city ordinance and subject to imprisonment shall be confined in the city jail; provided, however, that any city shall have the right to use the jail of the county for the confinement of such persons but it shall be liable to the county for the cost of keeping such prisoners .

(Emphasis added.) Thus, under the clear language in this provision, a person arrested and charged for violating a law other than a city ordinance is not subject to confinement in a municipal jail. Moreover, a city has the statutory right to rely upon the county to provide jail facilities.

Unlike cities, counties in Idaho do have a statutory duty to maintain a jail. Idaho Code § 20-601 provides:

The common jails in the several counties of this state are kept by the sheriffs of the counties in which they are respectively situated, and are used as follows:

1. For the detention of persons committed in order to secure their attendance as witnesses in criminal cases.
2. For the detention of persons charged with crime and committed for trial.
3. For the confinement of persons committed for contempt, or upon civil process, or by other authority of law.
4. For the confinement of persons sentenced to imprisonment therein upon a conviction for crime.

The scope of this statute is broad and does not differentiate between the state, its political subdivisions or the nature of the crime. Further, Idaho Code § 20-612 states:

The sheriff must receive all persons committed to jail by competent authority except mentally ill persons not charged with a crime and juveniles. It shall be the duty of the board of county commissioners to furnish all persons committed to the county jail with necessary food, clothing and bedding, and the board of county commissioners is authorized to pay therefor out of the county treasury under such rules and regulations as they may prescribe.

These statutes correspond with title 31, Idaho Code, which provides for counties and county law. Idaho Code § 31-2202 sets forth the duties of the county sheriff. Idaho Code § 31-2206(6) states:

The sheriff must:

.....

(6) take charge of and keep the county jail and the prisoners therein.

Idaho Code § 31-3302 provides that "the expenses necessarily incurred in the support of persons charged with or convicted of crime and committed therefor to the county jail" are charges to be borne by the county.

In light of the foregoing statutes, it is clear that the Idaho Legislature intended counties to be primarily responsible for providing jail facilities within the county and left the matter of city jails to the discretion of the various cities. Since Lincoln County has the statutory duty to provide a jail, it follows that the county must accept city prisoners regardless of the nature of the crime. The fact that Lincoln County has decided to no longer maintain a full-scale jail facility does not relieve the county of its statutory duty to accept city prisoners. Although these prisoners must be transported to Gooding County or Cassia County, it does not alter the statutory right of municipalities to rely upon Lincoln County for housing prisoners.

Question Nos. 2 and 3:

Do I as Sheriff have the responsibility to transport city prisoners from Lincoln County to jail (in another county) at the time of the arrest? Do I as Sheriff have the responsibility to transport prisoners who were arrested by the city from jail (in another county) to court and back to jail?

Answer:

The analysis set forth above is equally applicable to these questions. Again, the county has the statutory duty to provide a jail. This duty includes detention of prisoners in order to secure their attendance to all court proceedings. Idaho Code § 20-601. Even though the county has decided to contract with other counties for jail services, this decision does not alter this duty. Moreover, there is no basis to require a municipality to transport prisoners to and from other counties simply because Lincoln County has decided not to maintain a jail. The additional burden caused by this decision, therefore, falls upon the county.

Question No. 4:

Does the city have the responsibility to pay for board of prisoners arrested by city officers on city ordinances and state motor vehicle violations?

Answer:

Clearly, the city must bear the reasonable costs of incarceration for persons charged and convicted of violating city ordinances. Idaho Code § 50-302A. In regard to the confinement expense for persons arrested by city police officers for violations of state motor vehicle laws, Idaho Code §§ 20-604 and 20-605 provide the answer. Idaho Code § 20-604 permits a court to order a prisoner's confinement in a county other than the county where the person was charged. In this instance, since Lincoln County has an agreement with Gooding County to provide jail services, the court presiding in Lincoln County can, pursuant to Idaho Code § 20-604, enter an order directing confinement of Lincoln County prisoners in Gooding County.

The costs of confinement outside Lincoln County are provided in Idaho Code § 20-605. This statute provides in relevant part:

The county wherein any court has entered an order pursuant to section 20-604, Idaho Code, shall pay all direct and indirect costs of the detention or confinement of the person to the governmental unit or agency owning or operating the jail or confinement facilities in which the person was confined or detained. The amount of such direct and indirect costs shall be determined on a per day per person basis by agreement between the county wherein the court entered the order and the county or governmental unit or agency owning or operating such jail or confinement facilities. In the absence of such agreement or order fixing the cost as provided in section 20-606, Idaho Code, the charge for each person confined or detained shall be the sum of thirty-five dollars (\$35.00) per day, plus the actual cost of any medical or dental services; In case a person confined or detained was initially arrested by a city police officer for violation of the motor vehicle laws of this state or for violation of a city ordinance, the cost of such confinement or detention shall be a charge against such city by the county wherein the order of confinement was entered. All payments under this section shall be acted upon for each calendar month by the second Monday of the month following the date of billing.

(Emphasis added.)

In County of Bannock v. City of Pocatello, 110 Idaho 292, 715 P.2d 962 (1986), the Idaho Supreme Court construed this provision with Idaho Code §§ 50-302A and 20-612 to reach the conclusion that, if a person is arrested by a city officer for violating a state motor vehicle law and confined in the county where charged, the city has no liability for costs of confinement. The county must bear these costs. However, if the person is confined outside the county pursuant to Idaho Code § 20-604, the city is liable for costs of confinement. The court held:

Accordingly, while I.C. § 50-302A does make the city liable to the county for the cost of jailing prisoners charged with or convicted of a city ordinance and I.C. § 20-605 places on the city liability for the cost of keeping prisoners in *other counties if that* offending person was either initially arrested by a city police officer for violation of a city ordinance or for violation of the state motor vehicle laws, nevertheless, under I.C. § 20-612, the City of Pocatello is not liable for the cost of keeping prisoners in the Bannock County Jail if the prisoner has been arrested by a city police officer for violation of a state motor vehicle law. Pursuant to I.C. § 20-612, the county has "the duty" to pay for the incarceration of such prisoners.

110 Idaho at 295.

A strong dissent argued that the city should be liable for the costs of confinement regardless of the site of incarceration. Nonetheless, it is clear that a city must pay the costs of confinement if the prisoner is incarcerated outside of the county where charged.

I am enclosing a copy of Attorney General Opinion 84-4. This opinion discusses the duties of the county sheriff in relation to municipal prisoners. It also has a detailed description of the evolution of the office of sheriff which should be of some interest to you and your county commissioners. The Bannock County case quoted above does not support this office's conclusion regarding costs of confinement of city prisoners within the county. Since Lincoln County does not maintain a jail, that aspect of both opinions is not germane to this discussion.

Please let me know if I can be of further assistance in this matter.

Yours very truly,

FRANCIS P. WALKER