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OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL  
Honorable Wm. P. Davis  
County Auditor  
Ellis County  
Waxahachie, Texas

Dear Sir:

Opinion No. 0-7353

Re: Liability of the county for the payment of account for feeding prisoners in county jail who are awaiting trial in corporation court.

We are in receipt of your letter of recent date requesting the opinion of this department on the above stated matter. We quote from your letter as follows:

"When prisoners, arrested by City of Waxahachie officers, are placed in the Ellis County jail, awaiting trial in the City of Waxahachie Corporation Court, which is legally liable to pay the Sheriff of Ellis County for their feeding, the City of Waxahachie or the County of Ellis?

"In other words under provisions of Art. 1040 or any other statute, can Ellis County legally pay the Sheriff of Ellis County 75¢ per day (or any amount) for the feeding of prisoners placed in the jail by officers of the City of Waxahachie, when these prisoners are not charged with any offense in any precinct, county or district court, but are charged in Corporation Court of the City of Waxahachie?

"When convicted these city prisoners pay fines into City of Waxahachie funds and Ellis County receives nothing for their maintenance and board while in the Ellis County jail."

Among the powers granted to commissioners' courts is that of providing for jails for their respective counties. (Arts. 2351 and 5115, V.A.C.S.) Article 5116, V.A.C.S., designates the sheriff as the keeper of the jail of his county, and it is his duty to "keep therein all prisoners committed thereto by lawful authority, subject to the order of the proper court." Article 5117 authorizes

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the sheriff to receive prisoners from the United States Marshal and provides that said Marshal is liable to the sheriff for the jail fees and other expenses of keeping such prisoners. Article 5118 deals with the sheriff's keeping of prisoners from other counties and authorizes him to recover from such other county the expenses attending the safekeeping of such prisoners. Article 1040, C.C.P., sets forth the sheriff's allowances for the safekeeping, support, and maintenance of prisoners confined in the county jail.

We note that a city, as a municipal corporation, is authorized by law to enact and administer its own ordinances and to provide for the punishment of violations thereof. From information furnished by the office of the Secretary of State, we find that Waxahachie is a home rule city and that under the provisions of Article 1175 such cities are authorized to provide for city jails. We further call to your attention the following statutory provisions:

Article 870, V.A.C.C.P.

"All process issuing out of a corporation court shall be served by a policeman or marshal of the city, town or village within which it is situated, under the same rules as are provided by law for the service by sheriffs and constables of process issuing out of the justice court, so far as applicable. Each defendant shall be entitled to at least one day's notice of any complaint against him, if such time be demanded."

Article 871, V.A.C.C.P.

"When the defendant in such cases is committed to custody, he shall be committed to the custody of the chief of police or city marshal of such city, town or village, to be held by him in accordance with the ordinance providing for the custody of prisoners convicted before such corporation court."

Article 872, V.A.C.C.P.

"The governing body of each incorporated city, town or village shall by ordinance prescribe such rules, not inconsistent with any law of this State, as may be proper to enforce, by execution against the property of the defendant, or imprisonment of the defendant,

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the collection of all costs and fines imposed by such court, and shall also have power to adopt such rules and regulations concerning the practice and procedure in such court as said governing body may deem proper, not inconsistent with any law of this State. All such fines shall be paid into the city treasury for the use and benefit of the city, town or village."

We note that under the foregoing provisions, any process issuing out of corporation court is served by a policeman or marshal of the city, and the defendant in such case, when committed to custody, is committed to the custody of the chief of police or city marshal of such city, and said officer is required to hold such prisoner in accordance with the ordinance providing for the custody of prisoners convicted before such corporation court. In view of the foregoing, it is our opinion that a prisoner who is awaiting trial in a case in corporation court, who by law should be committed to the custody of city officers to be held in accordance with a city ordinance, does not constitute a prisoner who, under requirement of law, shall be committed to the sheriff's custody and held in the county jail. Although we find statutory provisions with reference to the safekeeping and maintaining of Federal prisoners in county jails as well as prisoners from other counties, we are unable to find any provision which authorizes the county or the sheriff thereof to keep and maintain prisoners awaiting trial in corporation court. Since a defendant in a case in corporation court, when committed to custody, is by law committed to the custody of city officers to be held by them in accordance with city ordinance, and since a city is authorized to provide for a city jail, it is our opinion that the matter of safekeeping and maintaining such prisoners is the responsibility of the city. Furthermore, we are unable to find any statute authorizing the county or any of its officers to contract with the city for the keeping and maintaining of prisoners awaiting trial in corporation court.

In view of the above and foregoing, and in view of the facts submitted, it is our opinion that the county commissioners' court is not legally authorized to pay a claim for feeding prisoners who are awaiting trial in corporation court.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*J. A. Ellis*  
J. A. Ellis  
Assistant



APPROVED 17, 1949

*Wm. P. Davis*  
ATTORNEY GENERAL OF TEXAS

JAE:djm