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OPINION COMMITTEE

RQ-0115-GA

Friday, October 3, 2003

Attorney General Opinions

P.O. Box 12548

Austin, Texas 78711

Re: Use of Municipal Jails by Deputy Constables

Dear Sir,

FILE # ML-43278-03

I.D. # 43278

Herewith I am forwarding a request for an opinion regarding Use of Municipal Jails by Deputy Constables:

- 1) May the City Council bar Deputy Constables from using the Municipal Jail as a holding facility for Prisoners until they are magistrated and bond set?
- 2) May the City Council forbid use of the Jail to hold prisoners arrested on warrants for penal code offenses temporarily pending posting of bond or transport to a county facility?

There are few relevant cases on the issue and all the Attorney General's Opinions concern the converse issue, i.e. use of County Jails to hold municipal prisoners. But those opinions can give some guidance in the area.

In Opinion MW-52, your office held that the County had no obligation to hold persons arrested for municipal ordinance violations only. That was later clarified in Opinion DM-313 which opined that "[i]f a city police officer arrests a person for violating a state statute and a magistrate issues a commitment order for the prisoner, the county is required to incarcerate the prisoner." Id. See also

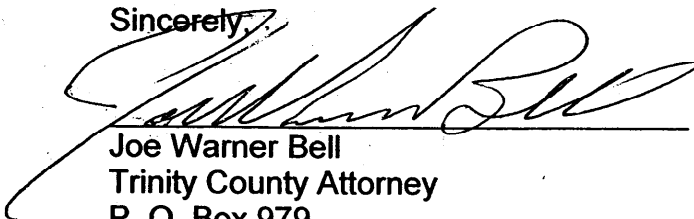
Opinion JC-0312. Further clarification came in Opinion JM-1009 which further opined that if offense for which the prisoner was arrested was a municipal traffic ordinance which mirrored a state statute, the county is responsible for housing the prisoner. Although some of the statutory authority for Opinion JM-1009 has changed, the reasoning behind it does not change result of Opinions JM-151 and H-169, which held that the sheriff may, but did not have to, take prisoners arrested by city police officers before they are taken before a magistrate and committed to jail. But once committed to jail by a magistrate's warrant, the sheriff must take the prisoner. Id., See Texas Code of Criminal Procedure Article 2.18.

The Local Government Code Section 341.902 authorizes Class-A municipalities to build and establish jails and empowers the governing body to adopt necessary rules for jails. It also authorizes confinement of vagrants, disorderly persons and person who refuse to pay their fines and costs. Id.

Absent an interlocal agreement, the City Council may forbid use of the Jail to hold prisoners arrested on warrants for penal code offenses temporarily pending posting of bond or transport to a county facility because they are county prisoners.

And, absent an interlocal agreement, the City Council may bar Deputy Constables from using the Municipal Jail as a holding facility for Prisoners arrested for violating state statute, until they are magistrated and bond set.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Warner Bell", written over a horizontal line.

Joe Warner Bell  
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