

Opinion No. 52-5608

November 26, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Charles A. Feezer Assistant District Attorney Carlsbad, New Mexico

{*321} This is in reply to your letter of October 8, 1952, in which you requested an opinion concerning the disposition of city prisoners, arrested by the city officers of Carlsbad, and incarcerated in the county jail, you specifically request an opinion as to whether or not the sheriff of Eddy County by reason of limited facilities may refuse to accept more than 12 prisoners into his custody at any one time when brought to him by the city authorities of Carlsbad.

Your reference to Sections 14-4523, 41-4108 and 45-202 are applicable in your problem.

Under Section 45-202 there is no question that the county jail is to be used for the retention of every person or persons charged with any crime in the county. This statute is mandatory.

Section 41-4108 makes it mandatory on the sheriff to accept any person or prisoner charged with a crime and provides a penalty of two years imprisonment or a fine not exceeding three hundred dollars (\$ 300), if he wilfully refuses to receive such prisoners.

However, after doing some more research, I find that Section 14-1825 NMSA, 1941 Comp., concerning powers of cities and towns provides as follows:

"Municipal jails and reformatories -- Use of County Jail. -- To establish and erect calaboooses, bridewells, houses of correction and reform schools, and workhouses for the reformation and confinement of vagrant, idle and disorderly persons {*322} and persons convicted of violating any city or town ordinance, and make rules and regulations for the government of the same, and appoint the necessary keepers and assistants. To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law, and with the consent of the board of county commissioners."

Since Carlsbad is an incorporated city they have the authority to build a jail under the above statute and I can not understand why after being advised of the crowded conditions of the jail they have not erected a jail of their own. However, since they have no facilities, under this statute if they have the consent of the county commissioners they can continue to use the jail, but the use of the jail according to the above quoted statute has to be with the consent of the Board of County Commissioners and subject to the conditions as are imposed by law.

If the city refuses to come to any satisfactory agreement with the county commissioners, the county commissioners in my opinion could refuse to let the city use the jail, however, if it has been the custom for the city to use the jail under any kind of an agreement with the county commissioners neither the county commissioners nor the sheriff can put a limit to the number of prisoners that can be incarcerated.

Section 45-202 NMSA, 1941 Comp., provides:

"That the jail in each county shall be used for the retention of every person or persons who, within the same county, shall be charged with any crime, or properly committed for trial, or for the imprisonment of every person or persons who in conformity with sentence, upon conviction of an offense may have been sentenced, and for the safe-keeping of every person who shall be committed by competent authority, according to law."

It is therefore my opinion that in view of the above statutes cited neither the sheriff nor the county commissioners have a right or authority to limit the use of the facilities of the county jail if the city of Carlsbad has been using the jail with the county commissioners consent.

If no consent has ever been obtained from the county commissioners by the city of Carlsbad then the county commissioners may refuse until some satisfactory arrangement is made by the county commissioners and the city of Carlsbad.

Trusting that this fully answers your inquiry, I remain