

Opinion No. 69-50

May 21, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Vince D'Angelo, Assistant Attorney General

TO: Sheriff Robert Chavez, Torrance County, Torrance County Courthouse, Estancia, New Mexico

QUESTIONS

QUESTIONS

1. Who exercises control of the county jail?
2. May the sheriff provide living quarters for the jailer in available office space assigned to the sheriff for that purpose?
3. Does the Board of County Commissioners have the right to withhold the salary of a jailer employed by the Sheriff?

CONCLUSIONS

1. See Analysis.
2. See Analysis.
3. No.

OPINION

{*74} ANALYSIS

As to your first question, the pertinent New Mexico statutes provide:

"42-2-1. Jails under control of sheriffs -- Use. -- The common jails shall be under the control of the respective sheriffs of each county, and the same shall be used as prisons in the respective counties.

42-2-3. Inspection of jails by county commissioners -- Report to district court -- Suit against sheriff for violation. -- The county commissioners of the several counties of this state shall be the inspectors of the prisons in their respective counties, and shall visit the same at least twice a year, and shall carefully examine the condition of each cell as to cleanliness and discipline, and the sheriff shall lay before them a list of the names, ages, and the cause of imprisonment of each person, and it shall be the duty of said

county commissioners to report to the district court at each term of said court held in each county, and should it appear from the same that any of the provisions of law have been violated or broken, the judge of the said district court shall order the district attorney to forthwith commence suit against the sheriff for such violation { *75 } and failure in the discharge of duty."

While the county commissioners have the duty to inspect jails at least twice a year, the jails are under the control of the sheriffs of the respective counties. In the event the county commissioners discover some violations of law, Section 42-2-3, N.M.S.A., 1953 Compilation limits the action they may take: the proper course is to report any violations they find to the district court.

As to whether the sheriff may provide living quarters for the jailer and his family in office space provided to the sheriff for that purpose; while Sections 15-37-12 and 15-37-16, N.M.S.A., 1953 Compilation grant the board of county commissioners the authority to control and manage county property, this does not mean the board may arbitrarily decide how space assigned to the county sheriff may be used. (See Advisory Letter dated January 13, 1967 from Oliver E. Payne, Deputy Attorney General, to Mrs. Leona Laumbach, County Clerk, Las Vegas, N.M.).

The duties of the county sheriff are imposed upon him by Section 15-40-2, N.M.S.A., 1953 Compilation which provides:

"Duties -- The sheriff shall be conservator of the peace within his county; shall suppress assaults and batteries, and apprehend and commit to jail, all felons and traitors, and cause all felons to keep the peace and to appear at the next term of court and answer such charges as may be preferred against him."

Section 5-1-13, N.M.S.A., 1953 Compilation, requires the sheriff to execute a bond conditioned upon the fact that he will faithfully perform all the duties imposed upon him by statute. He cannot do so unless he has the assistance of a jailer. Section 15-43-13, N.M.S.A., 1953 Compilation provides in its pertinent part:

"The county jailer and jail guard or guards shall be appointed by, and shall be under the supervision and control of the sheriff."

As I understand the problem, Torrance County has only one jailer: He is required to be on duty 24 hours a day. Consequently, the jailer could not perform his duties unless he were to live in or near the jail. At the time the courthouse was built, living quarters for the jailer were included as part of the office space provided for the county sheriff. The sheriff has the authority to require the jailer, as a condition of employment, to live in convenient quarters provided for that purpose. It follows that if the jailer is required to live in assigned quarters, the jailer's family may be permitted to occupy the quarters as well. There is no statutory requirement that only bachelors be hired as jailers. An opposite conclusion places an unreasonable burden on both the sheriff and the jailer.

Therefore, we conclude that the sheriff may provide quarters for the jailer and his family in space assigned to the sheriff, for that purpose, convenient to the jail.

As to whether the Board of County Commissioners may withhold the salary of a jailer employed by the sheriff, the pertinent New Mexico statute provides:

"15-43-24. Payment of salaries and expenses. -- Except as hereinbefore and hereinafter otherwise provided, the salaries of all county officers and the salaries of deputies, as fixed by law, and the expenses, as fixed by law, **shall be paid monthly** out of the county salary fund, upon warrants drawn by the county commissioners, and **shall be paid** from the respective dates upon which the several county officers qualified."
(Emphasis Supplied).

The provisions of this statute are mandatory. The county {*76} commissioners are required, by its terms to pay the jailer's salary. It should be noted that if the board of county commissioners were permitted to withhold the jailer's salary they would, in effect, have the power to fire him; a result directly in conflict with the terms of Section 15-43-13, which gives the sheriff that power. Therefore, we conclude that the Board of County Commissioners may not withhold the salary of the jailer. For analysis of an analogous problem, see Attorney General Opinion No. 65-28.