

Opinion No. 79-41

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Counties may charge municipalities a fee for prisoners incarcerated for violation of municipal ordinances.

QUESTIONS

May a board of county commissioners lawfully charge an incorporated municipality a fee for prisoners incarcerated under process issued by a municipal court for violations of municipal ordinances in the county jail over which the board has financial responsibility?

CONCLUSIONS

Yes.

ANALYSIS

Municipalities, other than home rule municipalities, are created by statute and may exercise only such authority as may be defined by law. See, e.g., **Sanchez v. City of Santa Fe**, 82 N.M. 322, 481 P.2d 401 (1971). Municipal authority with respect to the use of county jails is defined at Section 3-18-20 NMSA 1978 which provides:

"A municipality may use the county jail for the confinement or punishment of offenders subject to the requirements imposed by law and the board of county commissioners."

OPINION

A municipality may thus use county jails for the confinement of persons in violation of municipal ordinances, but that use is subject to the requirements imposed by the respective board of county commissioners. See also Section 33-3-2 NMSA 1978. It appears, therefore, that a board of county commissioners may impose, as such a requirement, a fee for each municipal prisoner so incarcerated.

In summary, the statutory authority of municipalities would permit municipal prisoners to be housed in county jails, and Section 3-18-20 NMSA 1978, **supra**, specifically authorizes the respective board of county commissioners to set the requirements for this arrangement.

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