

Opinion No. 87-53

September 2, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: James A. Hall, Assistant Attorney General

TO: O.L. McCotter, Corrections Department, 1422 Paseo de Peralta, Santa Fe, New Mexico 87501

QUESTIONS

1. May the Corrections Department contract with counties for the housing of inmates committed to the department?
2. If so, what possible liability would be incurred?

CONCLUSIONS

1. No.
2. There is no need to answer this question because of our answer to the first question.

ANALYSIS

The Corrections Department's authority to imprison an inmate in a particular facility is set forth in section 31-20-2(A) NMSA (1987 Supp.):

Persons sentenced to imprisonment for a term of one year or more shall be imprisoned in a corrections facility designated by the corrections department, unless a new trial is granted or a portion of the sentence is suspended so as to provide for imprisonment for not more than eighteen months; then the imprisonment may be in such place of incarceration, other than a corrections facility under the jurisdiction of the corrections department, as the sentencing judge, in his discretion, may prescribe; provided that a sentence of imprisonment for one year or more but not more than eighteen months shall be subject to the provisions of subsections D and E of this section and shall not be imposed unless the requirements set forth in subsection D of this section are satisfied.

This section specifically provides that persons committed to the Department of Corrections shall be imprisoned in a "corrections facility" with one specific exception set forth in Sections 31-20-2(D) and (E). Under those provisions the Corrections Department and local detention facilities are given express statutory authority to enter into a joint powers agreement for the incarceration of prisoners sentenced to more than one year and less than eighteen months incarceration. If such an agreement exists, the

sentencing judge then has the option to sentence a convicted criminal defendant to the local facility.

A "corrections facility" is defined in the Corrections Act as "any facility or program controlled or operated by the state or any of its agencies or departments, and supported wholly or in part by state funds, for the correctional care of persons..." Section 33-1-2(C) NMSA 1978. County detention facilities would not qualify as "corrections facilities" under the statute. The state or its agencies do not control or operate county detention facilities. Specific statutory provisions authorize housing inmates committed to the Corrections Department in other state corrections systems, Section 31-20-2(C)(5) NMSA (1987 Supp.), and the Forensic Hospital of the Health and Environment Department, Section 31-20-2(C)(6) NMSA 1978 (1987 Supp.).

In addition, specific statutory authority exists for holding county inmates in state correctional facilities for safekeeping. Section 33-3-15 NMSA 1978. No such express statutory authority exists for housing inmates committed to the Corrections Department in county detention facilities for the entirety of their sentence. Under the statutes, the Corrections Department does not have the authority to contract with a county detention facility to house inmates.

You raise the question whether inmates housed under the local sentencing option would be able to enforce the provisions of the Consent Decree entered in *Duran v. Apodaca*, No. CV 77-72(C) (D.N.M. 1977), on the county detention facility. The Duran consent decree states that it is applicable to "all those inmates who are now, or in the future may be, incarcerated in the Penitentiary of New Mexico at Santa Fe or any maximum, close, or medium security facility open for operation by the State of New Mexico after June 12, 1980." Further, all of the stipulations and orders entered by parties and the courts in the Duran case are constructed in terms of New Mexico state facilities. It is our opinion that the consent decree's terms would not be applicable to an inmate sentenced to a county detention facility under the local sentencing option.

ATTORNEY GENERAL

HAL STRATTON Attorney General