

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

December 2, 2022

The Honorable Ernest Sanchez
Mayor, Town of Clayton
1 Chestnut
Clayton, NM 88415

Re: Opinion Request – County Sheriff Prisoner Transport Responsibility upon Arrest of Individuals by Municipal Police

Dear Mayor Sanchez:

You requested our opinion regarding which entity bears the primary responsibility of transporting individuals arrested and taken into custody by the Town of Clayton Police Department for felony charges or on out-of-state felony warrants, as Union County currently contracts with Roosevelt County, located over 150 miles from the Town of Clayton, to house prisoners. In particular, you want to know if NMSA 1978, Section 4-41-2 (1953) renders the Union County Sheriff responsible for transporting individuals to the jail in Roosevelt County prior to any court appearance. Based on our examination of the relevant constitutional, statutory, and case law authorities, as well as the information available to us at this time, and as explained in greater detail below, we conclude that the Union County Sheriff is not solely responsible for transporting individuals initially arrested by a municipal officer, regardless of the distance of the designated jail from the point of initial arrest.

As a preliminary matter, in order to properly assess the responsibilities of the sheriff and municipal officers, it is necessary to review the statutory authority governing county jails, as well as the statutory authority granting law enforcement powers to municipal officers. We begin our analysis with an examination of the statute setting forth the duties of county sheriffs. In the first instance, Section 4-41-2 explicitly designates the sheriff as being responsible for transport to court, noting that:

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 offenders to keep the peace and to appear at the next term of the court and answer such charges as may be preferred against them.

NMSA 1978, § 4-41-2. We note, however, that this provision does not address the mechanics of bringing an individual to their next hearing or whether the sheriff is responsible for transporting

an individual to jail when that individual is arrested by another law enforcement agency. Otherwise, the law is clear that upon arrest, the accused must be brought before a judge swiftly.¹ *See* NMSA 1978, § 31-4-14 (1953) (requiring an accused be brought before a judge with all practicable speed in the event of arrest for felony extradition) *See also* NMSA 1978, § 31-1-5(B) (1973) (mandating that every accused shall be brought before a court having jurisdiction to release the accused without unnecessary delay).

Next, Section 33-3-13 governs housing or confinement of prisoners pending court hearings. It states:

“All persons charged with crime committed in the state, while awaiting indictment or trial on such charge, shall be incarcerated in the county jail of the county wherein such crime is alleged to have been committed or any facility operated by agreement between such counties or municipalities except that such persons may be temporarily imprisoned in other places of confinement while being conveyed or awaiting conveyance to the jail of the proper county...”

NMSA 1978, § 33-3-13 (1983). Here, the Legislature clearly has acknowledged that there will be instances when an individual is held prior to transfer to an out-of-county jail pending a court hearing, as is the current situation in Union County.

In the context of juvenile arrests, our office has acknowledged that there are circumstances in which the sheriff is responsible for transport to court appearances, but the individual making the arrest is responsible for transport to out-of-county detention facilities. *See* N.M. Atty. Gen. Advisory Letter to the Honorable Richard D. Flores, Fourth Judicial District Attorney, (July 29, 2009) (concluding that there was no exemption from responsibility to transport a juvenile to detention on the basis of a person’s affiliation or non-affiliation with a particular law enforcement agency pursuant to the controlling statute.) Similar to the statutory authority granted to individuals initiating juvenile arrests, we believe statutory authority has also been granted to municipal officers to provide them with similar powers and responsibilities to sheriffs within their municipality, including arresting any person fleeing from justice. *See* NMSA 1978, § 3-13-2 (1988).

It is a fundamental rule of construction that, when a power is conferred by statute, everything necessary to carry out the power and make it effective and complete will be implied. *See Kennecott Copper Corp., Chino Mines Div. v. Employment Sec. Comm'n*, 1967-NMSC-182, ¶ 18, 78 N.M. 398, 402, 432 P.2d 109, 113. It is unlikely that the Legislature intended for municipal officers to, upon arrest, wait for the availability of a sheriff to transport every individual charged with a felony. Given this rule of construction, we believe a court may reasonably conclude that municipal officers likewise have the authority to transport individuals

¹ For example, Rule 6-401(A)(1)(a) NMRA requires an accused appear in Magistrate Court to address conditions of release within three days of arrest if the defendant is being held in a local detention center or five days if the defendant is not being held in a local detention center. With regard to an individual being held on an out-of-state warrant, a defendant must be seen within two business days. *See* Rule 6-811(A) NMRA.

arrested to county custody, rather than needing to wait for a sheriff transport from every point of arrest to jail.

A 2000 Attorney General opinion lends support to this conclusion. There, our office opined that sheriffs are not the only agents who can transport an individual. *See N.M. Att'y Gen. Op. No. 00-02 (2000)* (holding that transportation of prisoners housed at a county jail or other detention facility is not the exclusive responsibility of the local sheriff's department). It reached that conclusion following the court's decision in *State v. Bd. of County Comm'rs of San Juan County*, 1935-NMSC-048. There, upon reviewing which entity bore the responsibility for a prisoner awaiting trial and transfer to the State Penitentiary for safe keeping, the New Mexico Supreme Court concluded that an individual charged with a crime and in the custody of the sheriff awaiting trial is a county prisoner. *State v. Bd. of County Comm'rs of San Juan County*, 1935-NMSC-048, ¶ 5 39 N.M. 310, 46 P.2d 669, 669. Relying on this language, our office has held that, when a municipal officer acts to arrest someone, they are acting under their statutory authority as a municipal officer and the municipality is therefore responsible and liable for the prisoner until the prisoner is delivered to the actual custody of the county jail or any facility operated by agreement between such counties or municipalities. *See N.M. Att'y Gen. Op. 85-3 (1985)* (concluding that, just because a person is charged with a crime, does not mean that that individual is in the county's custody.) *See also N.M. Att'y Gen. Op. 68-21 (1968)* (establishing that persons arrested and held by municipal police officers for violations of state law are the responsibility of the municipality).

In summary, were we to interpret Section 4-41-2 in a manner which imposed responsibility on the county sheriff to transport all individuals arrested on a felony warrant or felony charges, the sheriff would arguably have the responsibility to transport every individual from the point of arrest. Although it is burdensome on rural departments and counties, we conclude that the Union County Sheriff does not bear the sole responsibility of transporting individuals arrested by the municipal police to jail, regardless of whether or not the arrest is for a felony. New Mexico law mandates that the sheriff is responsible for ensuring that prisoners are present for their court hearings, but not for initial transport upon arrest.

Please note that this opinion is a public document, available to the general public. As such, we may provide copies of this letter to the general public. If we may be of further assistance, or if you have any questions regarding this opinion, please let us know.

Sincerely,



Sally Malavé
Director, Open Government Division