

Opinion No. 43-4350

August 2, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Honorable E. T. Hensley, Jr., District Attorney, Portales, New Mexico

In your letter dated July 28, 1943, you refer to Chapter 83, Laws of 1943, Section 5, and inquire whether the Public Health Department has authority to designate a municipal or other jail as a place of quarantine, and if so, whether the sheriff or jailor may legally confine and detain a person in his custody for the purpose of quarantine without any criminal charges being filed.

Under Section 5 of this law the district health officer is authorized to designate and define the limits of the area in which an infected person is to be quarantined. It is true that the mere presence of the disease does not constitute an offense and a person under quarantine is not deprived of all the same rights as a prisoner confined in jail or penitentiary. However, in many respects quarantine and imprisonment are similar, in view of the fact that a person's freedom to come and go as he pleases and to receive friends or visit with others is greatly restricted.

In the case entitled *Dowling v. Harden*, 88 So. 217, the Court states that a person subject to quarantine may not be imprisoned in the jail or penitentiary, but should be placed in a pest house or a hospital where he can be suitably isolated. However, in the case entitled *In re Magee*, 105 Kan. 574, 185 P. 14, which deals with a situation arising out of the spread of venereal diseases incident to the first World War and involves the designation by the State Board of a portion of the State Penitentiary as a detention home for men and women subject to quarantine, the Court held that although a person may not be imprisoned, in the strict sense of the word, yet he may be quarantined in a section of a penal institution and be subject to the rules and regulations of the governing officer.

In view of this authority, I am of the opinion that the district health officer may designate a section of the municipal or county jail as the limits of an area in which an infected person may be quarantined, especially in instances where such person has no home or other place in which he could be quarantined. A jail, however, should not be designated in such a manner as to endanger other prisoners or run the risk of communicating the disease to them.

The additional expense that may be involved may be a problem which may make it impossible for the local authorities to pay for the care and lodging in connection with quarantine. This especially would be true if it were necessary to rent a hotel room or other place of lodging in order to quarantine a person. However, if a section of a jail is used I believe the expense could be borne in the same manner as feeding of prisoners.

The State Health Department plans to open a rapid cure hospital in Albuquerque in the near future and when this hospital is in operation infected persons who cannot be quarantined at home could be sent to the hospital in preference to being quarantined in jail and such hospital could be designated as the area of quarantine.

By C. C. McCULLOH

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