

Opinion No. 2011-164

February 6, 2012

The Honorable James Ratliff
State Representative
Post Office Box 791
Imboden, Arkansas 72434-0791

Dear Representative Ratliff:

You have requested my opinion on the following questions regarding the housing of prisoners in the county jail:

1. Can a County sheriff refuse to house prisoners for an Inc. town with a Marshall [sic]? Same County.
2. Can the same county refuse Communications to the town Marshall [sic]?

RESPONSE

Before answering your first question, I must first point out that the Arkansas Rules of Criminal Procedure authorize the sheriff, as the “ranking officer” at the jail, to release a suspected misdemeanor upon the issuance of a citation in lieu of continued custody:

When a person is arrested for any misdemeanor, the ranking officer on duty at the place of detention to which the arrested person is taken may issue a citation in lieu of continued custody.¹

¹ Ark. R. Crim. Proc. 5.2(b). The term “citation” as used in this rule means “a written order, issued by a law enforcement officer who is authorized to make an arrest, requiring a person accused of violating the law to appear in a designated court or governmental office at a specified date and time.” *Id.* at 5.1(b).

Although Rule 5.2 refers only to a misdemeanor, this office has previously opined that the rule would be interpreted to confer authority to issue citations with respect to violations. Op. Att’y Gen. No. 96-021.

It should also be noted that in the event the jail is at its maximum capacity, the sheriff is authorized to commit a prisoner in his custody to the nearest jail in another county.²

Circumstances plainly exist, therefore, under which a sheriff may lawfully decline to further detain a prisoner or prisoners. That being said, the general rule, in response to your first question, is that the county sheriff has an affirmative obligation to accept prisoners from within the county:

Neither the sheriffs nor other keepers or administrators of jails shall refuse to accept any prisoner lawfully arrested or committed within the jurisdiction of the supporting agency of the jail except as necessary to limit prisoner population in compliance with subsection (a) of this section.³

Your question seems to suggest that the sheriff's obligation in this respect might be impacted by the fact that an incorporated town within the county has a marshal.⁴ You have offered no information or theory in support of this suggestion, nor has my research disclosed a basis for this view. To the contrary, my research indicates that a sheriff would generally be obliged to accept custody of a person lawfully arrested by a marshal within the sheriff's county.⁵

² A.C.A. § 12-41-509 (Repl. 2009). *See also* A.C.A. § 12-41-503(a) (Repl. 2009), *infra* n. 3 (authorizing sheriff to refuse to accept prisoners where necessary in order to manage the jail in compliance with constitutional requirements.)

³ A.C.A. § 12-41-503(b) (Repl. 2009). *Accord* Op. Att'y Gen. Nos. 2009-043; 2005-278.

Subsection 12-41-503(a) provides:

Sheriffs and other keepers or administrators of jails within the State of Arkansas are responsible for managing the populations and operations of their respective facilities in compliance with the laws and the Arkansas Constitution and within the requirements of the United States Constitution.

⁴ *See generally* A.C.A. § 14-45-109 (Repl. 1998) (authorizing town councils of incorporated towns to provide, by ordinance, for the election of a town marshal.) *See also* A.C.A. § 14-52-103 (Repl. 1998) (providing that the governing body of an incorporated town may, by ordinance, "establish either a police department or a city marshal's office.")

⁵ *See* Op. Att'y Gen. 2009-043 at 13 (responding to the question: "Can the sheriff or his representative refuse to accept custody of a person lawfully arrested by a municipal police officer from a city within the sheriff's county?"). The opinion states: "It is my opinion that neither the sheriff nor his representative is permitted to refuse to accept such a prisoner unless that action is necessary to limit prisoner population in compliance with the law and constitution of this state and the United States Constitution. *Id.* (citing A.C.A.

I am somewhat uncertain as to the precise focus of your second question. Without clarification, I can only note that the duties of a sheriff likely include the implied duty to respond to a fellow peace officer's reasonable requests for assistance where the request pertains to matters within the sheriff's jurisdiction and general duties. Although a sheriff may be accorded a certain amount of discretion in handling such communications, a response is in all likelihood within his or her general duties, and would best promote the sheriff's responsibility as conservator of the peace.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/EAW:cyh

§ 12-41-503(a) & (b)). The opinion also notes the fact that the city and county may enter into an agreement pursuant to A.C.A. § 12-41-503(d) for the housing of prisoners; but in the absence of an agreement, the county quorum court may set a daily fee pursuant to A.C.A. § 12-41-506(a) for keeping prisoners of municipalities. *Id.* at 5-8