

Opinion No. 2013-058

August 29, 2013

The Honorable Chris Richey
State Representative
Post Office Box 2356
West Helena, Arkansas 72390-0356

Dear Representative Richey:

This is my opinion on your question whether the sheriff of a county with no operating jail may “transport prisoners to out of state jail facilities, where they can be held until a disposition has been reached in their respective criminal proceedings.”

In my opinion, the answer to your question is “no.”¹

Because the Arkansas Constitution does not specify the sheriff’s powers and duties, they are up to the General Assembly to specify.² A statute addresses precisely the facts underlying your question, providing that “where there is no jail in his or her county or the jail of the county is insufficient, [the sheriff] may commit any person in his or her custody . . . to a jail in some other county *located in this state*, provided the sheriff of the other county consents. . . .”³

¹ My opinion is limited to the question posed. The law provides that persons in state or local government custody may be taken outside the state in various other circumstances. *See, e.g.* A.C.A. § 9-29-201 (Repl. 2009, as amended by Act 751 of 2013) (Interstate Compact on the Placement of Children, under which child adjudicated delinquent may be placed in out-of-state institution); A.C.A. § 12-49-102 (Repl. 2009) (Interstate Corrections Compact, which authorizes states – but not local governments – to contract to confine inmates in other states); Op. Att’y Gen. 95-407 (constitutional considerations may require taking inmate outside state for medical treatment).

² *Cain v. Woodruff Cnty.*, 89 Ark. 456, 117 S.W. 768 (1909); *see* Ark. Const. art. 7, § 46 (each county to elect a sheriff, who shall be *ex officio* collector of taxes unless otherwise provided by law).

³ A.C.A. § 12-41-509(a)(1) (Repl. 2009) (emphasis added).

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“The phrase *expressio unius est exclusio alterius* is a fundamental principle of statutory construction that the express designation of one thing may properly be construed to mean the exclusion of another.” *MacSteel Div. of Quanex v. Arkansas Oklahoma Gas Corp.*, 363 Ark. 22, 31, 210 S.W.3d 878 (2005). Here, I take the express designation of jails in counties “located in this state” to mean the exclusion of jails located outside the state. It is my opinion, then, that a sheriff may not take a person described in your question to be held in an out-of-state jail.⁴

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

⁴ The statute once allowed a sheriff to commit a prisoner to the “nearest jail in some other county in the same circuit.” Mansfield’s Digest § 3890. The Arkansas Supreme Court, characterizing that limitation as “directory merely,” held Howard County liable for medical expenses of a prisoner committed by the Howard County Sheriff to jail in Hempstead County, a county not in the same circuit as Howard County. *Hart v. Howard Cnty.*, 44 Ark. 560, 561, 1884 WL 977 (1884). The Court in effect blessed prisoner placements with Arkansas counties that were not specified in the statute at the time. One might argue that *Hart* means that the current limitation (“in this state”) is also merely directory and therefore does not prohibit a sheriff from placing a prisoner in a county not specified in the current statute – all of which are outside the state because the statute now contemplates placement with *any* consenting Arkansas county. Although there can be no assurance of the outcome of any given case, I do not believe the argument would prevail. In *Hart*, a strict reading of the statute would have excused Howard County from paying the prisoner’s medical expenses – expenses for which it otherwise clearly would have been responsible under the law – merely because the “wrong” county accepted the prisoner *at the Howard County Sheriff’s request*. Note that the statute imposes, as it did in 1884, certain obligations on the receiving sheriff. *See* A.C.A. § 12-41-509(a)(2), (c)(2); and Mansfield’s Digest §§ 3890, 3893 (receiving sheriff to receive, safely keep, and deliver the prisoner). The Arkansas General Assembly has no power to impose duties on an out-of-state sheriff. So a court urged to follow *Hart* with respect to the current statute surely would take into account the fact that the receiving out-of-state sheriff would not be bound by the statute, a fact not complicating the *Hart* Court’s decision as the Hempstead County Sheriff *was* so bound.