



**STATE OF ARKANSAS**  
**THE ATTORNEY GENERAL**  
**DUSTIN MCDANIEL**

Opinion No. 2014-073

August 8, 2014

The Honorable Jon S. Eubanks  
State Representative  
2543 Greasy Valley Road  
Paris, Arkansas 72855-5874

Dear Representative Eubanks:

You have requested my opinion on the following questions concerning jail construction:

1. May the quorum court of the county in which the jail will not be built authorize the building of a county jail outside the county's boundary?
2. If not, may the state legislature approve by act such a measure?

You preface these questions with the statement that "[t]wo counties wish to build one jail to serve both counties."

**RESPONSE**

I assume from your preliminary statement that these questions contemplate the joint creation of one jail to serve the two counties. According to my review of state law, authority currently exists for the creation of jail facilities by agreement between or among different counties. The jail in that case would be a "county jail" of each county, in the sense of housing each county's respective prisoners. But it obviously would be located beyond one of the county's boundaries. My research indicates that an arrangement of this sort is contemplated under current state law. Your second question is consequently moot.

I previously identified some of the relevant statutes in this regard in response to a question concerning the “booking and administration fee” under A.C.A. § 12-41-505. As I noted in Op. Att’y Gen. 2007-304, this fee must be devoted exclusively to “the maintenance, operation, and capital expenditures of a county jail or regional detention facility.”<sup>1</sup> The opinion is instructive in addressing the terms “county jail” and “regional detention facility:”

The term “county jail” in my opinion refers to a facility that is maintained or operated by the county, either through the sheriff or a designee. *See* A.C.A. § 12-41-503 (Supp. 2007) (regarding management of local jail populations). *See also* A.C.A. § 12-41-506 (Repl. 2003) (addressing expenses of municipal prisoners held in county jails). Regarding a “regional detention facility,” I believe this term reasonably has reference to ***a facility that is created by agreement among or between different political subdivisions, or among or between political subdivisions and the state or a prison contractor.*** *See* Op. Att’y Gen. 2004-302 (noting that regional jail facilities can be created through interlocal agreement pursuant to A.C.A. §§ 25-20-101 – 108); A.C.A. § 12-50-101 – 110 (Repl. 2003) (authorizing cooperative endeavors for financing, constructing, acquiring, and operating prison facilities). *See also* A.C.A. § 22-3-1225(c) (Repl. 2004), part of the “Public Facilities Finance Act of 1983,” A.C.A. §§ 22-3-1201 – 1226 (Repl. 2004) (providing for use of funds in the Prison Construction Trust Fund to construct and equip, *inter alia*, “regional jail facilities operated jointly by cities, counties, or regional jail commissions.”)

(Emphasis added).

As this excerpt makes clear, there is authority in state law for the creation of regional jail facilities by agreement between or among different counties. Another body of law not mentioned in this excerpt – A.C.A. § 12-41-701 *et seq.* (Repl. 2009) – also authorizes the construction and operation of a jail under a cooperative agreement between, *inter alia*, two or more counties. *See id.* at -701(6)(B) and -703.<sup>2</sup>

---

<sup>1</sup> A.C.A. § 12-41-505(b)(3) (Repl. 2009).

<sup>2</sup> The term “jail” is defined in full under A.C.A. § 12-41-701(6) as follows:

Jail facilities created by agreement pursuant to the above authority obviously will be located beyond one of the participating county's boundaries. While this seems beyond dispute, it prompts consideration of the requirement under another statute that a jail must be constructed in each county and at the county seat (absent a vote to locate it outside the county seat):

(a) There shall be erected *in each county*, at its established seat of justice, a good and sufficient courthouse and jail.

(b) The quorum court may, by a majority vote, or by referral to a vote of the people, determine the location of the jail facility at some location other than the established seat of justice.<sup>3</sup>

It is difficult to reconcile this statute with the above authorization of regional jail facilities. As noted above, a regional facility will of necessity be constructed outside one of the participating counties. This would seem contrary to A.C.A. § 14-19-108(a), at least to the extent this statute means a jail must be built by a county within the boundaries of that county.<sup>4</sup> Under established rules of statutory construction, seemingly contradictory provisions must be reconciled to the extent practicable.<sup>5</sup> Where two statutes conflict and cannot be reconciled, however, the later one in time will control.<sup>6</sup> Based on these principles, I conclude that the

---

(A) "Jail" means a county jail or jails and jail facilities of a county, a municipal jail or jails and jail facilities of a municipality, or a public instrumentality jail or jails and jail facilities of a public instrumentality in this state.

(B) The term "jail" also means a jail constructed and operated under a cooperative agreement between any two (2) or more municipalities, counties, or public instrumentalities in any combination for the housing of their respective misdemeanor incarcerants and other incarcerants awaiting trial[.]

"Public instrumentality" means "any public facilities board, regardless of whether formed by county or municipal ordinance, and any other governmental or political subdivision of this state." *Id.* at (10).

<sup>3</sup> A.C.A. § 14-19-108 (Repl. 2013) (emphasis added).

<sup>4</sup> I have considered and rejected the possibility that subsection (b) of § 14-19-108 is authority for a county to build a jail facility outside its boundaries. The authority under this subsection to locate the jail outside the county seat was added to the statute by Act 64 of 1994 (2nd Ex. Sess.). Read together with subsection (a), subsection (b) in my opinion simply provides that a jail to be erected *in the county* may be located somewhere in the county other than the county seat.

<sup>5</sup> See *Ragland v. Allen Transformer Co.*, 292 Ark. 601, 740 S.W.2d 13 (1987); *Gilbert v. Gilbert Timber Co.*, 19 Ark. App. 93, 717 S.W.2d 220 (1986).

<sup>6</sup> *State v. Lawrence*, 246 Ark. 644, 439 S.W.2d 819 (1969).

provisions authorizing regional jail facilities qualify A.C.A. § 14-19-108's categorical requirement that a jail be built in each county. The requirement of a jail in each county was enacted in 1838,<sup>7</sup> whereas the authorization of regional facilities by agreement is of relatively recent origin.<sup>8</sup>

This is not to say that A.C.A. § 14-19-108 has been repealed by these later provisions authorizing the creation of jail facilities by agreement between counties. In my opinion, section 14-19-108 remains effective for any county that has not arranged for the detention of its prisoners outside its boundaries pursuant to agreement.<sup>9</sup>

In sum, for the reasons stated above, it is my opinion in response to your first question that authority currently exists for the creation of a jail facility by agreement between or among counties. The facility in that case will be located beyond one of the county's boundaries. Assuming, therefore, that your first question contemplates such joint creation of one jail to serve the two counties, the answer is generally "yes," in my opinion. Your second question is rendered moot by this response.

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

Sincerely,



DUSTIN MCDANIEL  
Attorney General

---

<sup>7</sup> See Rev. Stat., ch. 36, § 1 (1838).

<sup>8</sup> The authority under A.C.A. § 12-41-701 *et seq.* to construct and operate a jail under a cooperative agreement was enacted under Act 918 of 1983. The Corrections Cooperative Endeavors and Private Management Act, A.C.A. §§ A.C.A. § 12-50-101 – 110, was enacted under Act 427 of 1987. The Interlocal Cooperation Act was enacted under Act 430 of 1967.

<sup>9</sup> I note in this regard that despite subsection 14-19-108(a)'s mandate that a jail "shall be erected in each county," another statute in the same year unaccountably acknowledges that there may not be a jail within each county. A.C.A. § 12-41-509(a)(1) (Repl. 2009) (codification of Rev. Stat., ch. 81, § 17 (1838), authorizing the county sheriff to commit prisoners to a jail in another county "where there is no jail in his or her county," provided the other county sheriff consents). It is my understanding that some counties indeed have no jail, and I assume those counties have entered agreements with other jurisdictions for the housing of their prisoners. Such arrangements appear to be acknowledged by A.C.A. § 12-41-503(d), which refers to counties that "share a common jail" and authorizes agreements between such counties "to share operational costs of the jail."