

May 19, 2000

OPINION

OF Opinion No. 00-02

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Attorney General

BY: Elizabeth A. Glenn

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TO: The Honorable John M. Paternoster

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QUESTION:

Does a county sheriff's department have exclusive responsibility for transporting county prisoners to and from court hearings once they have been committed to the county jail?

CONCLUSION:

No. County sheriffs do not have the exclusive duty to transport prisoners. Under the applicable statutes, while not expressly stated, sheriffs, jail administrators and independent contractors operating local jails all have sufficient authority to transport inmates in their custody.

FACTS:

In Taos County, the county jail is operated by a jail administrator and the County has contracted with detention facilities in other jurisdictions for the housing of prisoners. These circumstances have led to questions regarding which entity – the Taos County Sheriff, the Taos County jail administrator or administrators at other detention facilities at which County prisoners are housed – are responsible for transporting Taos County prisoners in their custody or under their supervision to and from court.

ANALYSIS:

Until the mid-1980's, sheriffs evidently had exclusive control over county jails, including the transportation of prisoners in their custody to and from court. In 1983 and 1984, legislation was enacted that gave counties the option of appointing a jail administrator or independent contractor to operate the county jails. See N.M. Laws 1983, ch. 181; N.M. Laws 1984, ch. 22. See also NMSA 1978, § 3-33-1 (1984) (stating that the "common [county] jails shall be under the control of the respective sheriffs, independent contractors or jail administrators..."). This legislation did not

directly address whether, in counties that exercised the options authorized by these statutes, sheriffs continued to be solely responsible for transporting county jail inmates to court.

Current statutory provisions reflect that the transportation of prisoners continues to be a responsibility of the local sheriffs. For example, sheriffs are required, among other things, to "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 (1846). In addition, sheriffs are required to attend the sessions of the district court and certain criminal hearings and trials before the magistrate courts. § 4-41-16 (1996). Consistently with these duties, the rules of some district courts reflect the general assumption that the sheriff will transport prisoners to and from court. See, e.g., NMRA 2000, LR1-600 (transport orders shall address "the agency designated to transport the person in custody to and from the proceeding, usually the Sheriff of the appropriate county"); LR2-113 (requiring inclusion of "[t]he designated transporting agency (usually the sheriff of the appropriate county)" in court orders for the transportation of persons under the jurisdiction of the Second Judicial District for trial, hearing or other proceeding).

Sheriffs also are entitled, by statute, to collect specified fees to cover their expenses for transporting prisoners. See NMSA 1978, § 4-44-18(C) (1973) (per diem and mileage expenses for "transporting persons committed by a court to any state institution or required to be returned by order of the court from any state institution to the county of commitment"); § 4-44-20 (1983) (county sheriffs reimbursed for actual expenses "incurred for the care and feeding of prisoners in transit").

The statutes described above may presume that sheriffs generally will be responsible for transporting prisoners, but they do not charge sheriffs with exclusive responsibility for transporting county jail inmates or necessarily preclude other appropriate parties from transporting such inmates. Moreover, although not explicit, there is statutory support for the authority of qualified people, other than sheriffs, to transport prisoners. Most significantly:

Jailers and any employee of a local jail who has, at the particular time, the principal duty to hold in custody any person accused or convicted of a criminal offense or placed in the legal custody or supervision of a local jail shall have the power of a peace officer with respect to arrests and enforcement of laws when on the premises of a local jail, while transporting a person committed to or under the supervision of a local jail, while supervising any person committed to or under the supervision of a local jail anywhere within the state or when engaged in any effort to pursue or apprehend such a person....

NMSA 1978, § 33-3-28(A) (1985) (emphasis added).

For purposes of Section 33-3-28, a "local jail" includes county jails, and a "jailer" is "any employee of a local jail who has inmate custodial responsibilities, including those persons employed by private independent contractors who have been designated as jailers by the sheriff." § 33-3-28(D). Thus, it appears that the legislature contemplated that jail administrators and independent contractors operating county jails would be transporting inmates committed to or under the supervision of the jails, and would require for that purpose the powers of and protections accorded to a peace officer. See also NMSA 1978, § 33-3-13 (1983) (authorizing sheriffs or jail administrators to remove a person in their custody to another county jail or other place of safety when, in their opinion, the life of such person or others is in imminent danger); NMRA 2000, LR2-113(C) (stating that Bernalillo County Detention Center ("BCDC") personnel shall transport BCDC inmates to the Second Judicial District Court for trials and hearings).

Considering the above statutes, we conclude that the transportation of prisoners housed at a county jail or other detention facility is not the exclusive responsibility of the local sheriff's department. Jail administrators and independent contractors may also transport inmates at their

facilities. Accordingly, the Taos County Sheriff, the jail administrator of the Taos County jail and jailers in charge of other detention facilities that have contracted to house prisoners committed to the Taos County jail may make whatever arrangements are mutually agreeable to ensure that inmates housed in those facilities are properly transported to and from court proceedings.

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