



A SELECTED READING

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Jails

All cities and towns of this state shall have the power to establish, erect, maintain, and regulate jails, station houses and prisons according to Section 11-47-7, Code of Alabama 1975. Section 11-47-8 of the Code states:

“If the jail of any municipality is destroyed or becomes overcrowded, insufficient or unsafe or any epidemic dangerous to life is prevalent in the vicinity, or there be danger of rescue or lawless violence to any prisoner, any circuit judge of the county, on application of the mayor or governing body of such municipality and proof of the fact, may direct the removal of any prisoner or prisoners, either before or after conviction, to the nearest sufficient jail in any other municipality or county; and it is the duty of such judge in such case to make an endorsement on the order or process of commitment stating the reason why such removal is ordered, and to date and sign such endorsement. The maintenance and costs of removal of said prisoners shall be borne by the municipality requesting said removal.”

The statutes quoted above are self-explanatory and give legal sanction to the establishment and operation of jails and the expenditure of public funds for jails. A place to incarcerate a convicted offender is essential to good order and discipline and, therefore, a necessity for every municipality.

Tort Liability

Prior to July 10, 1975, municipalities were immune from suits arising out of the exercise of governmental functions. On July 10, 1975, the Alabama Supreme Court issued an opinion in the case of *Jackson v. Florence*, 320 So.2d 68 (Ala. 1975), in which governmental immunity for municipalities was abolished. The court had previously ruled that the operation of a jail by a municipality constituted a governmental function. *Hillman v. Anniston*, 108 So. 539 (Ala. 1926). As a result of the decision in the *Jackson* case, municipalities were held to be liable for injuries which result from the municipal operation of jails. However, the Alabama Supreme Court has since issued opinions that hold that immunity applies to employees of municipalities in the same manner that immunity applies to employees of the State. See, *Ex parte Birmingham*, 624 So.2d 1018 (Ala. 1993) and *Birmingham v. Brown*, 969 So.2d 910 (Ala. 2007).

As a municipal police officer with responsibility for the city jail, a law-enforcement duty within the meaning of immunity statute, a police department major was within the umbrella of protection provided to peace officers by the immunity statute when she conducted a body search of a city correctional officer to determine if she had stolen an inmate's money, and, thus, the major was immune from tort liability in correctional officer's action against her. If a municipal peace officer is immune pursuant to immunity statute, then the city by which he is employed is also immune. *Ex parte Dixon*, 55 So.3d 1171 (Ala.2010).

Exemption from Attachment and Execution

McQuillin states that jails owned by municipalities and the lots upon which they stand, are exempt from attachment and execution, and this is true independent of express statutory provisions. *McQuillin, Municipal Corporations*, Section 28.57 (3d Ed. 1990). See, *New Orleans v. Louisiana Construction Company, Ltd.*, 140 U.S. 654 (1889), for the proposition that property held by municipal corporations, in trust for the benefit of their inhabitants and used for public purposes, is exempt from attachment and execution.

Under Alabama statutes, municipal property is exempt from attachment. Section 6-10-10, Code of Alabama 1975, states: “All property, real or personal, belonging to the several counties or municipal corporations in this state and used for county or municipal purposes shall be exempt from levy and sale under any process or judgment whatsoever. In *Ellis v. Pratt City*, 20 So. 649 (Ala. 1896), the plaintiff sought to garnish insurance proceeds payable to the city from fire loss of the public hall and market house and the defendant city claimed its exemptions. The decision is quoted in part: ‘Under the evidence in the case, and the legal principles applicable thereto, said fund was not liable to, but was exempt from plaintiff's garnishment.’” Further, a lien on property owned by a municipality and used for municipal purposes cannot be enforced. AGO 2000-178.

Contractual Authority

“Municipalities and counties may contract with each other for the ownership or use and occupation of parts of city halls, city jails, county courthouses and county jails or other public buildings held and owned by such municipalities or counties located within such municipalities, and any such contract shall be binding upon both the municipality and county until revoked by the joint agreement and action of both parties to such contract.” Section 11-80-3, Code of Alabama 1975. This is the authority by which municipalities may arrange through contractual agreements to use a county jail. Additionally, state law provides that except as otherwise prohibited by law, any county or incorporated municipality of the State of Alabama may enter into a written contract with any one or more counties or incorporated municipalities for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually. Section 11-102-1 *et. seq.*, Code of Alabama 1975.

Abolition of a municipal jail does not relieve the municipality of the responsibility to house municipal prisoners, nor is the county required to accept municipal prisoners without a valid contract. AGO 1993-079. *See also*, AGO’s 1999-160; 1999-210; and 2000-013. If the prisoner is charged with violation of a state offense, the county becomes responsible. If a municipality has failed to pay the costs of housing municipal prisoners, and where there is no written agreement or statutory requirement, the sheriff may refuse to accept prisoners from the municipality. The sheriff should give adequate notice to the municipality that he will no longer accept their prisoners. AGO 1999-210.

The Attorney General has advised that once a contract between a municipality and the county has been entered into, municipal prisoners may be committed to that part of the county jail used and occupied under the contract and that part of the county jail becomes the city jail. *Attorney General’s Biennial Report for 1928-30*, Page 446. In a subsequent opinion, the Attorney General advised that a sheriff should not receive municipal prisoners in the absence of a contract entered into under the provisions of Section 11-80-3, Code of Alabama 1975. *Attorney General’s Biennial Report for 1930-32*, Page 290. This opinion also states that, in the event of such a contract, a municipality should be charged with the expense of housing the prisoners and that such expense can in no way be made a charge against the state or the county. Both the county commission and the sheriff should be parties to any contract to house prisoners in the county jail. All fees, commissions, percentages, allowances, charges and court costs collected for the use of the sheriff and his deputies, excluding the allowances and amounts received for feeding prisoners, should be deposited into the county general fund. AGO 2011-020. The decision to accept municipal prisoners lies within the discretion of the sheriff, unless there is a current agreement between the county, the sheriff and the municipality for the sheriff to accept municipal prisoners. AGO 2003-032.

AGO 1999-160 holds unless there is an agreement to the contrary, a municipality must pay the housing and costs of indigent prisoners who are charged with the violation of a municipal ordinance and are housed in the county jail. *See also*, AGO’s 2000-013 and 2003-025. The expenses of a municipal inmate are to be assessed against the inmate. If the inmate is indigent and has been convicted of violating a municipal ordinance, the municipality is responsible for the costs and expenses of housing indigent municipal prisoners in the county jail.

The use of a county jail by a municipality is a matter of contract between the county and the municipality. Usually, the feeding expenses are a matter of agreement between the municipality and the sheriff. AGO to Hon. T. O. Rolling, August 13, 1971. Feeding prisoners in the county jail is an official part of the duties of the office of the sheriff. The sheriff may contract with a private business to feed the prisoners. The business must pay any local license tax. The sheriff may purchase food products and transfer them to the business to be used for feeding the prisoners without incurring sales tax. AGO 2008-061 and AGO 2008-062

The county is responsible for the medical expenses of county inmates housed in the county jail. Section 14-6-19, Code of Alabama 1975. A municipality; however, is not responsible for the medical costs of a municipal inmate housed in a county jail unless the municipality has contracted to provide such services. AGO 2004-196. A county is not responsible for the medical costs of an indigent municipal prisoner simply because the county has agreed to house municipal prisoners. AGO 2008-029.

Considering the statutes quoted above and the opinions of the Attorney General, it is essential that a city and county agree on the use of jails. This contract must be finalized before it is lawful to incarcerate municipal prisoners in a county jail. Since this is a contract between two instrumentalities, the original contract and all subsequent additions or extensions should be carefully drawn to avoid misunderstandings between the parties.

Review of Alabama Statutes

Chapter 6 of Title 14 of the Code of Alabama 1975, addresses jails. Although these sections deal principally with county jails, the statutes are briefly reviewed for guidance. Section 14-6-1 states that the sheriff has charge of the jail and all county prisoners. Section 14-6-3 lists persons which may be committed. Section 14-6-13 provides that men and women prisoners, except husband and wife, must not be kept in the same room or apartment. Statues on segregation of races in jails were ruled

invalid by the federal courts in *Washington v. Lee*, 263 F.Supp. 327 (M.D. Ala. 1966). Section 14-9-3, which authorizes a reduction in the sentence of a prisoner who donates blood to the Red Cross, does not apply to prisoners in a city jail. AGO 1992-113. Under 14-6-1, Code of Alabama 1975, the sheriff has legal custody and charge of the jail in his county and all prisoners committed thereto. Additionally, Section 14-6-40, requires that the sheriff feed the prisoners of the county jails unless otherwise provided by law. The sheriff should seek funds from all applicable sources as provided by law for feeding prisoners in county jails. Feeding prisoners in the county jail is an official part of the duties of the office of the sheriff. The sheriff may contract with a private business to feed the prisoners. The business must pay any local license tax. The sheriff may purchase food products and transfer them to the business to be used for feeding the prisoners without incurring sales tax. AGO 2008-061 and AGO 2008-062. Any surplus in the food service allowance for feeding prisoners in the county jail should be retained by the County Sheriff's Office unless the county commission has adopted a resolution directing that the allowance be paid into the county general fund. If the county adopts such a resolution, it assumes the duty to feed the prisoners. The sheriff should seek funds from all applicable sources as provided by law for feeding prisoners. The state, county, municipalities, and federal government should cooperate in obtaining and providing adequate funding to feed prisoners from their jurisdictions which are housed in the county jail. AGO 2011-053.

Section 14-6-17 allows any person committed to jail to furnish his or her own support, under such precautions as may be adopted by the jailer to prevent escapes. The sheriff must furnish support for those prisoners who do not provide it for themselves. Section 14-6-19 requires the sheriff, at county expense, to furnish necessary clothing and bedding to prisoners who are unable to provide for themselves. The section further requires the county to provide necessary medical attention and medical supplies to those prisoners who are sick or injured when they cannot provide them for themselves. No prisoner shall be furnished with any spirituous, malt or vinous liquors, except on written order of a physician, and the jail may be punished for furnishing these substances. Section 14-6-18, Code of Alabama 1975. Prisoners may be removed because of fires and the court can order removal of seriously ill prisoners. Sections 14-6-8 and 14-6-9, Code of Alabama 1975.

The sheriff may summon as many guards as necessary to prevent escapes and may remove prisoners, under approval of the court, if the jail is not secure or is insufficient for the safekeeping of prisoners. Sections 14-6-6, 14-6-7, and 14-6-11, Code of Alabama 1975. Statutes also require certain bookkeeping, recording and reporting of all prisoners.

Sections 14-6-40 through 14-6-50, Code of Alabama 1975, cover the feeding of prisoners.

Section 14-6-22 requires the court to assess a charge up to \$20 per day plus actual medical expenses for the time prisoners convicted of misdemeanors are incarcerated. This fee is used to defray the costs of housing the prisoner. The fee is waived for indigent prisoners. These fees are assessed as costs of court.

Regional Jail Authority

Sections 14-6A-1 through 14-6A-9, Code of Alabama 1975, allow for multi-county regional jail authorities to construct, maintain and operate a regional jail facility for the participating counties. Sections 14-6A-30 through 14-6A-39, Code of Alabama 1975, provide that the municipal council of two or more municipalities, by resolution and with the initial consent of their respective mayors, may establish a regional jail authority for the purpose of constructing, maintaining, and operating a regional jail facility for the municipalities participating in the regional jail authority. Additionally, these statutes allow a municipality which desires to join an existing regional jail authority, to adopt a resolution and with the initial consent of the mayor, to request participation in the existing regional jail authority. A regional jail authority, by resolution, may approve the requesting municipality's participation in the authority, and if approved, the municipality shall participate with all rights and obligations of the original municipalities participating in the regional jail authority.

Supervision of Jails in Cities of More than 10,000 Population

Section 14-6-80, Code of Alabama 1975, imposes duties on the Department of Corrections regarding municipal jails in cities of more than 10,000 in population. The Department of Corrections is required to inspect such municipal jails at least twice a year or more often if deemed necessary. The Department shall aid in securing the just, humane and economic management of such institutions; shall require the erection of sanitary buildings; and shall investigate the management of such institutions and the conduct and efficiency of the persons charged with their management. The Department has an affirmative duty to require that jails and their grounds be kept in a sanitary condition and it must report results of inspections to the governor. A copy of the report must be furnished to the city council. Section 14-6-81, Code of Alabama 1975.

Cleanliness

A city council must provide adequate janitorial service for, and enforce cleanliness in, the jails. Bathing facilities, soap and towels, hot and cold water, clean and sufficient bedding and clean clothes must be provided. Section 14-6-93, Code of

Alabama 1975. Prisoners may be compelled to bathe when entering jail and at least once a week while confined. Section 14-6-94, Code of Alabama 1975.

Court Costs

Section 11-47-7.1 allows a municipal governing body to assess an additional court cost equal to the amount charged in district court for similar offenses. These funds must be used for the purchase of land for, and the construction, equipment, operation and maintenance of the municipal jail or other correctional facilities or juvenile detention center or for a court complex. These costs cannot be waived unless all other costs are waived. Court costs assessed under this section may be used to defray the expense of housing municipal prisoners in municipal jails. AGO 1995-179.

Other Attorney General's Opinions on use of these funds include:

- Expenses such as salaries, office machines and repairs. AGO 1996-236.
- An appropriation to a county to pay for housing municipal prisoners. AGO 1996-243.
- The purchase of a computer system, if the computer is to be used exclusively by the municipal court. AGO 1998-076.
- These funds **cannot** be used by a municipality to build or construct a police facility with or without a court complex. AGO 1999-012.
- Corrections Fund monies may be used to remodel the city hall auditorium, where the municipal court is located, even though there may be an incidental benefit to the municipality when the remodeled facility is used for city council meetings. AGO 2000-124
- Corrections Fund monies may be used to repair, remodel and renovate a city's court complex. AGO 2000-136.
- Neither Municipal Court Corrections Funds nor Capital Improvement Trust funds may be used to purchase police car video systems. AGO 2001-024.
- Corrections Fund monies may be used to remodel and refurnish the magistrate's office located in the town hall. AGO 2001-213.
- Corrections fund monies may be used to hire an additional magistrate for a municipal court, but cannot be used to furnish and employ personnel to staff a planned police substation. AGO 2003-054.
- The provisions of Section 11-47-7.1 of the Code of Alabama 1975 allow for a municipality to contract to pay a fee from the corrections fund to a county E911 center to enter and maintain the municipality's warrants into the NCIC database. To do so, the municipality must determine that the payment of the fee is a necessary expenditure for the operation and maintenance of the jail and court system. AGO 2005-193.
- Corrections Fund monies may be used to pay the cost of police officers transporting prisoners from the county jail to municipal court and for the magistrate to travel to the jail for 48-hour hearings. Provided however, the governing body must determine that the expenditures are necessary for the operation and maintenance of the jail and court. The determination of the appropriate costs, including mileage rate, per diem, or actual expenses, is in the discretion of the governing body. AGO 2006-066.
- A City may use Corrections Fund monies collected pursuant to Section 11-47-7.1 of the Code of Alabama to purchase a computer-aided dispatch system to be housed in the City Public Safety Facility. Corrections Fund monies should be contributed or used only to the extent that the jail or court complex benefits from the use of this dispatch system. AGO 2008-127.
- A municipality may use Corrections Fund monies for the eCite traffic citation system if the city determines the expenditures are necessary for the operation and maintenance of the court. Corrections Fund monies should be contributed or used only to the extent that the court benefits from the use of this citation system. AGO 2011-079.
- A city may use corrections fund monies to purchase metal detectors, scanning equipment, and to pay officers and other related expenses to secure the city hall building which houses the municipal court. AGO 2017-027.

Federal Courts and Prisons

In addition to state laws applicable to prisons and county and city jails, federal courts have placed other requirements on entities operating jails. Federal courts have become increasingly involved in the operation of prisons and jails in the state as well as in the interpretation of the rights guaranteed to prisoners by the Constitution and laws of the state and nation.

Attorney General's Opinions and Court Decisions on Jails

- A municipality is responsible for the medical expenses of an indigent who is injured while working out a fine in the custody of the municipality. AGO 1992-009.
- Use of excessive force on a prisoner may constitute cruel and unusual punishment even though the inmate is not seriously injured. *Hudson v. McMillian*, 503 U.S. 1 (1992).
- Individuals providing community service in lieu of incarceration are not covered under municipal workers compensation. AGO 1994-161. Similarly, persons convicted in municipal court and sentenced to community service are not eligible for workers compensation benefits. AGO 1994-238.
- While a county commission is not required to pay the funeral expenses of a prisoner killed in the county jail, it has the discretion to pay the claim if it wishes to do so. AGO 1994-182.
- If a defendant must be transported to municipal court from state incarceration, the municipality must provide for transportation. AGO 1995-045.
- A municipality may house municipal prisoners arrested in one county in a facility maintained by another county. AGO 1995-304.
- In *Stark v. Madison County*, 678 So.2d 787 (Ala.Civ.App.1996), the Court of Civil Appeals held that a county owes no duty to an inmate to keep jail floors free of water or other foreign material, and, thus, is not liable when an inmate slips and falls in the jail bathroom.
- The costs of incarceration mandated by Section 14-6-22, Code of Alabama 1975, must be assessed against a misdemeanor unless the court remits the costs upon a finding that the payment would impose a manifest hardship on the defendant or his or her immediate family. In this case, the court may order the costs of incarceration to be paid in installments or in some other manner. AGO 1996-331.
- In *Lanford v. Sheffield*, 689 So.2d 176 (Ala.Civ.App.1997), the Court of Civil Appeals held that a municipal court prisoner was not an employee for workers compensation purposes.
- DNA specimens for the DNA database may be collected from youthful offenders. DNA specimens may be collected from persons found guilty of violating municipal ordinances which have adopted state misdemeanors. AGO 1998-024.
- A municipality is not responsible for the medical and transportation expenses of indigent prisoners who are in the custody of the county and are charged with state law felonies. AGO 1998-078.
- In *Loxley v. Coleman*, 720 So.2d 907 (Ala.1998), the Alabama Supreme Court held that although the town and its employee were entitled to sovereign immunity because they acted as state agents when transporting a state prisoner on work release, allegations against the employee for wanton behavior were entitled only to qualified immunity. Since the employee was not performing a discretionary function when driving a vehicle to avoid pot holes, neither she nor the town was entitled to immunity from this claim.
- A person who is arrested by a municipal police officer for a felony is a municipal prisoner until placed into the custody of the county. However, a person arrested by a municipal police officer for a felony may be taken to the county jail for detention. Under Section 12-14-1, Code of Alabama 1975, municipalities do not have jurisdiction over persons arrested for a felony; however, municipal officers have the authority to make arrests for felonies. AGO 2001-149.
- A municipality is not responsible for the medical expenses incurred as a result of the hospitalization of an inmate incarcerated in its jail. *Baptist Health Systems v. Midfield*, 792 So.2d 1095 (Ala.2001).
- Discipline of prisoners who provide legal advice to other prisoners in violation of prison regulations is constitutionally permissible if the regulations are reasonably related to legitimate penological interests under the test of *Turner v. Safley*, 482 U.S. 78 (1987). *Shaw v. Murphy*, 532 U.S. 223 (2001).
- It is within the sheriff's discretion to accept municipal prisoners, other than when required by law, unless there is a current agreement between the sheriff, county and the city for the sheriff to accept the prisoners. Both the county commission and the sheriff should be parties to any contract to house municipal prisoners. A city or a county may locate prisoners outside the city's or county's borders. Cities have authority to contract with a private firm for the operation of jails. AGO 2002-248.
- Alabama law does not provide any statutory procedure for disposing of any unclaimed personal property of inmates. Therefore, unclaimed personal property abandoned by transferred inmates may be disposed of by any reasonable method

of trash disposal. This opinion holds that 30 days is reasonable. AGO 2002-032.

- Funds placed on deposit with the custodian for a municipal jail by an inmate therein must be returned to the inmate when he or she is released from jail. If the money deposited remains unclaimed by the prisoner for more than five years, the jail may consider the money abandoned property. AGO 2003-175.
- The Prison Litigation Perform Act provides that “[no] action shall be brought with respect to prison conditions...by a prisoner...until such administrative remedies as are available are exhausted,” 42 U.S.C. § 1997e(a), applies to all inmate suits about prison life, including those that allege excessive force and those that involve particular episodes rather than general circumstances. *Porter v. Nussle*, 534 U.S. 516 (2002).
- A sheriff or jailer, acting as an agent for an inmate, may deliver prescription drugs prepackaged by dosage to an inmate when the drugs have been dispensed by a licensed pharmacist. AGO 2003-096.
- County inmate work details may be assigned to remove trees and shrubs donated from private property for use on public lands if the commission so directs. AGO 2004-023.
- An inmate taking part in the community-corrections program may be charged with escape under the appropriate circumstances. *State v. Bethel*, 55 So.3d 377 (Ala.Crim.App.2010).
- Section 12-15-208(d) Code of Alabama 1975 does not require a person who is alleged to be delinquent and is not yet adjudicated as such, who turns 18 while being detained in a youth facility, to be treated as an adult and transferred to an adult jail. AGO 2010-082 and AGO 2010-083.
- A correctional officer who is the spouse of the owner of a bail bonding company has a direct or indirect financial interest in the bail company. Thus, if the duties of the correctional officer include the authority to approve appearance bonds, the bail bond company should not be approved to execute bonds in the jail where the spouse is employed as a correctional officer. AGO 2011-024.
- There is no authority to remit restitution owed by a criminal defendant for serving time in prison and/or jail for nonpayment. Rule 26.11(i)(1)(i) of the Alabama Rules of Criminal Procedure is limited solely to fines. AGO 2014-067.
- To avoid violating section 22 of the Constitution of Alabama, the county commission must award a contract to provide inmate telephone service in the Morgan County Jail pursuant to competitive bidding. AGO 2013-012.
- Subject to the limitations of Rule 26.11 of the Alabama Rules of Criminal Procedure, the court may place a non-indigent defendant in jail for failure to pay a fine after the defendant has completed his or her sentence or probation for the underlying offense. The defendant may serve time until the fine is paid or no longer than one day for each \$15 of the fine, no longer than the maximum term of imprisonment for the offense, and no longer than one year if the offense is a felony. AGO 2012-027.
- There is no statutory authority for the sheriff to transport prisoners charged with crimes in other states to and from those states. AGO 2012-026.
- Excess funds from the additional ad valorem tax levied for the new county jail in Hale County may be used to repay debt incurred in funding the sheriff’s office if the Hale County Commission adopts a resolution determining that these expenditures are for law enforcement purposes. 2012-022.
- A city may use Corrections Fund monies for the eCite traffic citation system if the city determines the expenditures are necessary for the operation and maintenance of the court. Corrections Fund monies should be contributed or used only to the extent that the court benefits from the use of this citation system. AGO 2011-079.
- Any surplus in the food service allowance for feeding prisoners in the county jail should be retained by the Sheriff’s Office unless the county commission has adopted a resolution directing that the allowance be paid into the county general fund. If the county adopts such a resolution, it assumes the duty to feed the prisoners. Based on the facts presented, neither the sheriff nor the county may use the surplus for any purpose other than future expenses in feeding prisoners. The sheriff should seek funds from all applicable sources as provided by law for feeding prisoners. The state, county, municipalities, and federal government should cooperate in obtaining and providing adequate funding to feed prisoners from their jurisdiction that are housed in the county jail. AGO 2011-053.

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