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SPRINGFIELD

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FILE NO. S-1301

COUNTIES:

County Contract With the
Department of Corrections
for a Work Release Program

Honorable John E. Payne
State's Attorney
Lee County
Dixon, Illinois 61021

Dear Mr. Payne:

I have your letter wherein you ask my opinion on
the following question:

Does the sheriff of Lee County have the
power to enter into a contract with the Depart-
ment of Corrections pursuant to his powers as
warden of the county jail to receive prisoners
from that Department for a work release pro-
gram?

The contract to which you refer provides that a
maximum of four prisoners, to which the contract refers as

Honorable John E. Payne - 2.

clients, are to be released into the custody of the Lee County sheriff from the custody of the Department of Corrections. The Department is to reimburse the sheriff's office, to which the contract refers as the Lee County Work Release Center, for residential service care at a rate of \$19 per day per client. In addition, the sheriff is authorized to charge each client a maximum of \$5 per day in order to cover actual expenses of the residential service care. This care is to include "lodging, food, counseling, employment and for education, vocational guidance, medical referral, and required supervision and reporting of client movement and fiscal activities". It is my understanding that the client's lodging is provided in an easily accessible room in the jail, and that this contract has been renewed.

The powers and duties of the sheriff as warden of the county jail are set forth in "AN ACT to revise the law in relation to jails and jailers". (Ill. Rev. Stat. 1975, ch. 75, pars. 1 - 28.) Section 2 of that Act (Ill. Rev. Stat. 1975, ch. 75, par. 2) states:

Honorable John E. Payne - 3.

"The sheriff of each county in this State shall be the warden of the jail of the county, and have the custody of all prisoners in the jail, except when otherwise provided in the 'County Department of Corrections Act'."

In addition to this grant of custody of the prisoners in the county jail, the sheriff also has custody of the county court house and jail pursuant to section 14 of "AN ACT to revise the law in relation to sheriffs" (Ill. Rev. Stat. 1975, ch. 125, par. 14) as follows:

"He shall have the custody and care of the court house and jail of his county, except as is otherwise provided."

These provisions have never been interpreted as granting independent contractual authority to the sheriff. In Consolidated Chem. Lab. v. Cass County (1944), 322 Ill. App. 53, the court held that although the sheriff was entrusted with the care and custody of the court house, he had no authority to create contractual liability against the county for supplies. At pages 54-55, the court stated:

" * * *
While it is true, as appellee contends, that the sheriff is entrusted with the care and custody of the courthouse and jail (Ill. Rev. Stat. 1943, ch. 125, sec. 14 [Jones Ill. Stats. Ann. 124.14];

Honorable John E. Payne - 4.

Dahnke v. People, 168 Ill. 102) we believe his authority to create a liability against the county for supplies is subject to control by the board of supervisors of a county. It is to that board that the general corporate powers of the county have been delegated (Ill. Rev. Stat. 1943, ch. 34, sec. 23 [Jones Ill. Stats. Ann. 33.023]), and it is expressly given the power to make all contracts on behalf of the county. Ill. Rev. Stat. 1943, ch. 34, sec. 24 [Jones Ill. Stats. Ann. 33.024]; Stevens v. St. Mary's Training School, 144 Ill. 336. * * *

The corporate powers of the county are exercised by the county board. (Ill. Rev. Stat. 1975, ch. 34, par. 302.) Among the powers exercised by the board is the power to contract on behalf of the county. Section 24 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1976 Supp., ch. 34, par. 303) provides in pertinent part:

"Each county shall have power— * * *

* * *

Third—To make all contracts and do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate powers.

* * *

"

The county board's power to contract on behalf of the county authorizes the board to contract with the Department of Corrections for a work release program. It is my opinion that this authority is vested in the county board

Honorable John E. Payne - 5.

and that the sheriff's powers as warden of the county jail do not authorize him to enter into a contract with the Department for a work release program.

Very truly yours,

A T T O R N E Y G E N E R A L