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SPRINGFIELD

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FILE NO. S-1284

CRIMINAL LAW:
Sheriff's Duty to
Accept Prisoners

Honorable Frank X. Yackley
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Dear Mr. Yackley:

I have your letter wherein you ask several questions concerning the sheriff's duty to accept prisoners for confinement in the county jail. You first ask:

"* * * Does the warden of a County Jail have to accept prisoners who have been arrested by municipal police from municipalities within the County, when such arrests have been made without a warrant and when the prisoners have not been brought before the Court for the issuance of a mittimus?"

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It is my opinion that when a municipal police officer arrests an individual without a warrant and such arrest results in charges of a violation of a State or United States criminal statute, the sheriff, acting as warden of the county jail, shall accept the prisoner for confinement. See sections 4 and 5 of "AN ACT to revise the law in relation to jails and jailers" (Ill. Rev. Stat. 1975, ch. 75, pars. 4 and 5), which provide as follows:

"* * * [T]he warden of the jail shall receive and confine in such jail, until discharged by due course of law, all persons who are committed to such jail by any competent authority."

"§ 5. The provisions of the preceding section shall extend to persons detained or committed by authority of the United States, as well as of this state."

In the case of St. Mary of Nazareth Hospital v. City of Chicago (1975), 29 Ill. App. 3d 511, 515, city police found an individual suffering from gunshot wounds and had him hospitalized. Several hours later, this individual was charged with a violation of a State criminal statute. In determining that the county was liable for the medical expenses of the prisoner, the Illinois Appellate Court held that the

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wounded prisoner was within the custody of the sheriff rather than that of the city. (See also 1961 Ill. Att'y. Gen. Op. 231.) It would therefore follow that when municipal police arrest an individual without a warrant for a violation of a State criminal statute, such individual is properly within the custody of the sheriff. In that situation, municipal police officers would be "competent authorities" who may submit an individual for confinement in the county jail pending appearance before a judge for a preliminary hearing and prior to the issuance of a mittimus.

You next ask whether it makes a difference if the arrest is made under a State criminal charge or a city ordinance, and whether the sheriff has discretion in accepting prisoners in the absence of a contractual arrangement with the various municipalities for the acceptance and confinement of prisoners.

In answer to the first part of your question, it is my opinion that it does make a difference whether the arrest is made under a State criminal charge or a municipal ordinance violation, since statutory language clearly requires consent of the county board for municipalities to use the

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county jail. No such consent is required in cases where prisoners are arrested under a State criminal charge. (See Ill. Rev. Stat. 1975, ch. 24, par. 11-3-2; ch. 75, pars. 5 and 6.) It should be noted, in response to the second part of your question, that two previous opinions, No. S-1138, issued by me on August 19, 1976; and No. F-1890, issued by my predecessor (1968 Ill. Att'y. Gen. Op. 14), have advised that a municipality and a county may contract for the mutual use of jail facilities. See section 11-3-2 of the Illinois Municipal Code in this regard. (Ill. Rev. Stat. 1975, ch. 24, par. 11-3-2.) Accordingly, in the absence of a contract or other arrangement evidencing the county board's consent to the use of the county jail, the corporate authorities of a municipality are not authorized to use the county jail. Without such consent, the sheriff may not accept prisoners who have been arrested by municipal police officers for violating a municipal ordinance.

You next ask:

If the arrest is made with insufficient evidence or with malice and the municipal officer is then subjected to a suit for false arrest, would the sheriff or warden of the county jail

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be likewise liable for damages if he accepts and confines such a prisoner without examining the grounds for the arrest?

Pursuant to section 4 of "AN ACT to revise the law in relation to jails and jailers" (Ill. Rev. Stat. 1975, ch. 75, par. 4) the sheriff or warden of the county jail is under a duty to confine prisoners submitted by competent authorities. Consequently, by definition, section 2-202 of the Local Governmental and Governmental Employees Tort Immunity Act (Ill. Rev. Stat. 1975, ch. 85, par. 2-202) is applicable. Under this section a public employee, including the sheriff or warden (Ill. Rev. Stat. 1975, ch. 85, par. 1-202), is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton negligence. Whether a sheriff or warden acts willfully or wantonly is basically a question of fact.

Very truly yours,

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