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OPINION NO. 86-188

August 4, 1986

Mr. Clarence Hunter
State Representative
3004 Marshall
Little Rock, AR 72206

Dear Representative Hunter:

This is in response to your request for an official opinion on the following:

Is there a law stating that a sheriff for the State of Arkansas must house city and state prisoners, and if so, how much can they charge in fees to the city and state for their services?

The law as to whether a County sheriff must house city prisoners is very clear. The statutory provisions for the establishment of county jails are found at Ark. Stat. Ann. §46-401 et. seq. (Repl. 1977). Ark. Stat. Ann. §46-401 requires a common jail in each county be maintained and Ark. Stat. Ann. §46-403 places a duty on the jailer which is appointed by the Sheriff (Ark. Stat. Ann. §46-402) to receive from constables and other officers all persons who have committed offenses against this State or who shall be committed by any competent authority. Even though these provisions place a duty on the county to house city prisoners, Ark. Stat. Ann. §46-1701 does allow cities to maintain their own jail.

As to the fees allowed to be charged, Ark. Stat. Ann. §46-419.1 (Supp. 1985) provides as follows:

The quorum courts in the various counties in this state may establish a daily fee to be charged municipalities for keeping prisoners of municipalities in the county jail. The fee shall be based upon the reasonable expenses which the county incurs in keeping such prisoners in a county jail. Municipalities whose prisoners are maintained in a county jail shall be

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responsible for paying the fee established by the quorum court in such county. (Acts 1981, No. 796, §1, p. 1775).

The answer is "no" to your question pertaining to whether there is a specific statute that states that a sheriff must house state prisoners (Emphasis added). That is implicit, however, in those instances where the Department of Correction cannot accept state prisoners from county jails due to insufficient bed space, since the prisoner is in the safe keeping of the sheriff until acceptance by the Department. In such cases, the Department is required to reimburse the counties at rates determined by the Board of Correction. (Act 648 of 1985 Section 19). The prevailing rate of the county jail is to be considered by the Board in determining the rates to be reimbursed. And such reimbursement, obviously, is dependent upon sufficient appropriation.

The foregoing opinion which I hereby approve was prepared by Assistant Attorney General Paul L. Cherry.

Sincerely,


STEVE CLARK
Attorney General

SC:PLC:jr