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NO.
STATE OF NEBRASKA
OFFICIAL
AUG 30 1994
DEPT. OF JUSTICE

DATE: August 29, 1994

SUBJECT: Processing fee for County Prisoners

REQUESTED BY: Ellen L. Totzke, Hall County Attorney

WRITTEN BY: Don Stenberg, Attorney General
Joseph P. Loudon, Assistant Attorney General

You have asked whether absent specific statutory authority a county can charge other political subdivisions (e.g. State of Nebraska, cities, villages) a processing, or booking, fee for booking prisoners into the county jail when they are arrested by any law enforcement agency other than the county sheriff's office.

A county, even though a body politic and corporate, is a creature of statute and has only such powers as are conferred by the legislature. ***Lindburg v. Bennett***, 117 Neb. 66, 77, 219 N.W. 851, 855 (1928); ***City of Grand Island v. Willis***, 142 Neb. 686, 695, 7 N.W.2d 457, 462 (1943); ***State ex rel. Johnson v. Gage County***, 154 Neb. 822, 826, 49 N.W.2d 672, 675 (1951). ***See also*** Neb. Rev. Stat. § 23-101 (1991). After reviewing the Nebraska statutes, no statute can be found that permits county governments to charge other political subdivisions for the booking of prisoners into county jails. As a result, it must be concluded that counties do not possess such authority. The following statutes, however, most closely confer and limit a county's authority in relation to this issue.

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Peace officers have the duty to arrest and detain any person found violating any law of this state or any legal ordinance of any city or village. Neb. Rev. Stat. § 29-401 (1989), amended by LB 451, § 1, Laws 1994. Furthermore, Neb. Rev. Stat. § 29-1001 (1989) provides that whenever a person is in lawful custody, the custodian of that person may confine him or her in the jail of any county in this state, or other secure and convenient place of confinement, to be procured by such custodian. Moreover, Neb. Rev. Stat. § 29-410 (1989) states that any officer having in lawful custody any person accused of an offense may, for the purpose of bringing the prisoner before a magistrate, detain the prisoner in any county jail of this state for one night or longer. Finally, except in counties where a county board of corrections exists, the sheriff shall have charge and custody of the jail. Neb. Rev. Stat. § 23-1703 (1991). The sheriff is required to receive those lawfully committed and to keep them until discharged by law. ***Id.***

The cost of keeping and maintaining of any prisoner is to be paid by the county in which the offense was committed or alleged to have been committed. Neb. Rev. Stat. § 29-1004 (Supp. 1993). Neb. Rev. Stat. § 47-120 (Cum. Supp. 1992) states in pertinent part that "[t]he county board or county board of corrections serving pursuant to chapter 23, article 28, shall provide proper quarters and adequate equipment for the preparation and serving of all meals furnished to all prisoners confined in the county jail. The county sheriff shall have full charge and control of such services and the county board shall provide for all washing, fuel, lights, and clothing for prisoners, subject to the right of the county to be paid by the state for state prisoners at the rate of three dollars and fifty cents per day, and subject the right of the county to be paid by the city or federal government for city or federal prisoners at actual cost to the county . . . ." ***See also City of Grand Island v. County of Hall***, 196 Neb. 282, 242 N.W. 2d 858 (1976). We have found no other statutes arguably relevant to the question at hand.

Section 47-120 specifically authorizes counties to charge the state, city or federal government for certain enumerated costs in the area of prisoner care. (i.e., meals, washing, fuel, lights, and clothing). However, nowhere within the items listed in § 47-120 does the legislature make any reference to booking fees or any other expense of imprisonment that does not directly relate to prisoner care. Because the legislature apparently chose to exclude booking fees, it is implicit that a county cannot charge other political subdivisions for such fees.

There is an instance where a county may be able to charge a booking or processing fee. The county board of a county and the mayor and legislative authority of a city located within the county are authorized to jointly construct and maintain a jail. ***See*** Neb. Rev. Stat §§ 47-301-308 (1988). "[W]here any such county or any such city shall build such jail . . . independently of the other, such county or such city as does not own or manage a jail for the detention of prisoners . . . shall have the right to contract with the other for its use . . . ." Neb. Rev. Stat. § 47-306 (1988). A contractual agreement might provide that such a booking fee may be charged. Of course, if such a contract does exist, you will have to refer to the terms of the contract to determine if a booking or processing fee may be assessed by the county and to the statutes to determine whether such a contractual provision is allowed by law.

Sincerely,

DON STENBERG
Attorney General

Joseph P. Loudon
Assistant Attorney General

APPROVED BY:

Attorney General

14-032-10