

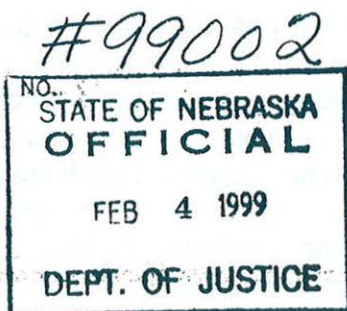


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DATE: February 4, 1999

SUBJECT: Duty of Department of Correctional Services to Accept "Safekeeper" Inmates From Counties.

REQUESTED BY: Harold Clarke, Director
Nebraska Department of Correctional Services

WRITTEN BY: Don Stenberg, Attorney General
Laurie Smith Camp, Deputy Attorney General

You have asked whether or not the Nebraska Department of Correctional Services must accept "safekeeper" inmates from Nebraska counties.

Neb. Rev. Stat. § 83-171(1994) provides in part:

There is hereby created a Department of Correctional Services which shall: (1) Maintain and administer facilities required for. . . the safekeeping of such other persons as may be remanded to the department in accordance with law.

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Neb. Rev. Stat. § 29-1001(1995) provides:

Whenever it shall be lawful and necessary to confine any prisoner in custody previous to conviction upon a criminal accusation, or in custody for contempt or alleged contempt of court, or upon an attachment by order of a court or judge, or otherwise in lawful custody, or upon conviction of any offense, the officer or person having him in such custody may convey him to and confine him in the jail of any county in this state, or other secure and convenient place of confinement in this state, to be procured by such officer or person having such prisoner in custody.

Neb. Rev. Stat. § 29-1004(1995) provides:

The cost of keeping and maintaining any prisoner previous to his or her conviction of an offense punishable by imprisonment in a Department of Correctional Services adult correctional facility, either before or after his or her conviction of an offense not so punishable, or when he or she is not convicted of any offense, shall be paid by the county in which the offense was committed or alleged to have been committed.

Neb. Rev. Stat. § 83-173(1994) provides in part:

The Director of Correctional Services shall: . . . (7) Designate the place of confinement of persons committed to the department subject to section 83-176.

Neb. Rev. Stat. § 83-176(1994) provides in part:

(1) Whenever any person is sentenced or committed under any provision of law to a specific facility within the department or to the custody of the warden or superintendent of such facility, he or she shall be deemed to be sentenced or committed to the department.

(2) The director may designate as a place of confinement of a person committed to the department any available, suitable, and appropriate residence facility or institution, whether or not operated by the state, and may at any time transfer such person from one place of confinement to another

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It is apparent that Nebraska counties have the authority to place inmates with the Nebraska Department of Correctional Services for safekeeping under Neb. Rev. Stat. § 29-1001. **See also Rhodes v. Sigler**, 172 Neb. 439, 441 (1961); **State v. Curry**, 184 Neb. 682, 686 (1969). Such placements are not unlawful, as long as the county pays for the "cost of keeping and maintaining" the inmates. Neb. Rev. Stat. § 29-1004 (1995); **Kovarik v. County of Banner**, 192 Neb. 816, 825 (1975). It is also apparent that the Department of Correctional Services has the authority to return the inmates to the county if the county jail is "available, suitable, and appropriate." Neb. Rev. Stat. §§ 83-173 and 83-176 (1994). It is incumbent upon the Department of Correctional Services' administration to work with Nebraska counties to develop protocols to govern when and under what conditions the Department will accept county inmates for safekeeping.

Sincerely,

DON STENBERG
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APPROVED BY:



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