



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

April 4, 2024

The Honorable Steve Rushing
Sheriff, Lincoln County
215 Justice Street
Brookhaven, Mississippi 39601

Re: Housing Municipal Prisoners in the County Jail

Dear Sheriff Rushing:

The Office of the Attorney General has received your request for an official opinion.

Questions Presented

1. Is there statutory authority or case law stating that a city prisoner becomes a county prisoner when bound over to the county grand jury at a preliminary hearing?
2. Does Mississippi Code Annotated Section 47-1-39 authorize a county to include in the contract that a city inmate will not become a county prisoner until said prisoner is indicted by the grand jury?

Brief Response

1. We are not aware of any statutory authority or case law stating that a city prisoner becomes a county prisoner upon being bound over to the county grand jury at a preliminary hearing.
2. If a county and municipality choose to contract with one another for the holding of municipal prisoners in the county jail pursuant to Section 47-1-39, said contract should include the terms negotiated between the parties in accordance with the law. We are unable to officially opine as to the terms or interpretation of a contract.

Applicable Law and Discussion

While we are not aware of any statutory authority or case law stating that a city prisoner becomes a county prisoner upon being bound over to the grand jury at a preliminary hearing, Section 47-1-39 provides two options for housing municipal prisoners. That section states: “The governing

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authorities of municipalities shall have the power to construct and maintain a municipal prison, and to regulate the keeping of the same and the prisoners therein, and to contract with the board of supervisors, which is empowered in the premises, for the use of the county jail by the municipality.” *Id.*; see *Gage v. State*, 68 So. 2d 417, 418 (1953) (providing that a municipal defendant may be confined in the county jail if the city has contracted with the board of supervisors to use the county jail in lieu of constructing and maintaining their own); MS AG Op., *Rasco* at *1 (Sept. 5, 2008) (opining that the city may contract with the county for the holding of municipal prisoners or construct its own prison).

In response to your second question, Section 47-1-39 only authorizes a contract for the housing of municipal prisoners. It does not speak to the terms of said contract. Should the county and municipality choose to contract for the holding of municipal prisoners in the county jail, the two should negotiate terms of the agreement in accordance with the law. We are unable to officially opine as to the terms or interpretation of a contract. See MS AG Op., *Hensarling* at * 3 (Sept. 3, 2021) (stating that we cannot offer guidance on specific language of local agreements).

To the extent that any prior opinions conflict, they are modified prospectively to conform herewith.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Abigail C. Overby

Abigail C. Overby
Special Assistant Attorney General