

Opinion No. 65-50

March 22, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General George Richard Schmitt,
Assistant Attorney General

TO: Captain Martin E. Vigil, New Mexico State Police, P.O. Box 919, Espanola, New
Mexico

QUESTION

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Who is responsible for the care, transportation and handling of county prisoners after their incarceration by the state police?

CONCLUSION

See analysis.

OPINION

{*86} ANALYSIS

"Ordinarily, a sheriff, warden, jailer, or other prison official has the duty to receive and keep safely in prison all prisoners properly committed until their discharge by law." 72 **C.J.S.** 872. This is the general rule which is well supported by the New Mexico statutes pertaining to penal and reformatory institutions, Section 42-1-1, et seq., N.M.S.A., 1953 Compilation. With respect to county prisoners, the control and care of same while incarcerated, would appear to be the ultimate responsibility of the county sheriff, Section 42-2-1, supra, which is in accord with his status and duties at Common Law. 72 **C.J.S.** 857. However, an arrangement may be made as in your case where temporary control and responsibility over the county prisoners is exercised by city prison officials as long as the prisoners remain in the city jail.

Thus, under the authorities cited above, the responsibility of the state police for the care of county prisoners would terminate once they have been properly and lawfully delivered to jail or prison officials at the place of incarceration. However, we wish to emphasize that custody of the prisoner cannot be divorced from responsibility for same. And, so long as any custody over the county prisoner is retained or exercised by the state police officer after incarceration he would in all probability share in the responsibility for the care of the prisoner. This would apply particularly in a case where the state police officer was directed to remove a prisoner from the original place of confinement. In such a case the officer engaged in transporting the prisoner would at

least share in the responsibility for the safe handling of the prisoner and such responsibility would continue so long as the prisoner remained in the officer's custody.