

OPINION
65-82

May 10, 1965 (OPINION)

Mr. Ray H. Walton

State's Attorney

Williams County

RE: Counties - Sheriff Housing

This is in reply to your letter of April 26, 1965, in regard to the county commissioners furnishing a residence for the sheriff in your county.

You inform us that in an effort to make more space available for the use of county officials in the courthouse, the commissioners propose to move the sheriff's residence from the courthouse, making that space available for use by the welfare office. The commissioners wish to know whether they are obligated to furnish a residence for the sheriff either by law or by estoppel, inasmuch as they have been furnishing a residence for many years in the courthouse. In addition, in order to comply with the law a night jailer has been provided by the county with quarters next to the jail.

You state you can find no legal requirement with respect to the furnishing of a residence for the sheriff and in view of the request you would appreciate an opinion from this office in this regard.

We also find very little specific authority on this subject. In Hughes et al v. Pierce County Commissioners et al, 18 N.D., 474, we find quite a dissertation upon the custom of furnishing a combination of courthouse and jail in one building, although in that case they did not go into the matter of sheriff's residence as part of the general complex.

We also find an opinion of this office dated March 9, 1932, at Page 209 of the Report of the Attorney General of North Dakota for the period July 1, 1930, to June 30, 1932, to the effect that a board of county commissioners did not have authority to enforce a resolution requiring a sheriff to pay \$45.00 a month rent for the sheriff's residence. The case which was cited in arriving at the conclusion was Board of Commissioners of Franklin County v. Bunting, 111 Ind., 143, which was quoted as stating:

"The statute makes it the duty of the board of commissioners to provide and maintain a county jail and the law enjoins upon the sheriff as an official duty that he shall keep the jail. It results as a necessary implication that he must be provided with the means of discharging this duty, and this involves the authority of providing him with a residence as a part of the prison structure. * * * It was not intended that the jail should be composed entirely of prison cells, but it was intended that it should be provided with such rooms or apartments as will enable the sheriff by himself or deputy to

properly and efficiently discharge his duties. We know judicially that it has always been the custom to make suitable provisions for the sheriff's residence, and this custom has given a construction to the law which could not be disregarded even if there were a doubt as to the meaning of the statute.'"

That opinion concludes with the statement that:

"A consideration of the statutes and the foregoing authorities coupled with the fact that it has been throughout the state the practice ever since statehood for counties to provide sheriff's residence free of charge, leads me to the inevitable conclusion that the resolution of your county board is not enforceable."

Your question differs from that expressed in the above opinion in that rather than dealing with the rental of the sheriff's residence to the sheriff, it deals with the problem of the county's responsibility to provide him with a residence elsewhere, if and when an adequate jail staffing pattern is being maintained, with, of course, the management, control, etc., of same still being vested pursuant to the statute in the sheriff. The custom referred to in the opinion quoted from and as mentioned in the opinion, (a Thermofax copy of which is attached hereto), while recognized in some counties is not universal through the state.

On such basis it is our opinion that the county must by one means or another provide an adequate staff to handle the jail concerned during all hours that prisoners are confined therein, whether same is done by maintenance of a sheriff's residence in connection therewith or whether same is done by a full and adequate staff of deputy sheriffs, jailers, etc. There is no specific statutory requirement that your board of county commissioners furnish a sheriff's residence as such, and we therefore believe that there is no need for justification for furnishing him a residence elsewhere. Where, however, the sheriff has personally assumed full responsibility for twenty-four hour a day care, custody and surveillance of the prisoners, with or without additional help, a sheriff's residence in connection with the jail is a practical necessity and is in accordance with the usual custom in most of the counties of the state.

HELGI JOHANNESON

Attorney General