

**OPINION  
75-154**

June 24, 1975           (OPINION)

Mr. Lewis C. Jorgenson  
Assistant State's Attorney  
Ramsey County Courthouse  
Devils Lake, ND 58301

Dear Mr. Jorgenson:

This is in response to your inquiry in which you state:

"Chapter 12-44 N.D.C.C., provides that the County Sheriff shall have charge of the County Jail. However, here in Devils Lake we have a joint law enforcement facility and jail which is used by the City, County, and surrounding counties for jail purposes.

"The County and City Commissioners have employed a man as administrator of the building, however at the present time the Sheriff's Office has charge of the jail for purposes of security, feeding of prisoners, etc.

"The Commissioners would however like to put the building administrator in charge of the jail and the purpose of this letter is for an opinion of whether this can be done and still be in compliance with Chapter 12-44."

Section 12-44-12 provides:

"SHERIFF TO HAVE CHARGE OF THE JAIL. The sheriff shall have charge of the county jail of his county and of all persons by law confined therein, and shall conform in all respects to the rules and directions which may be made by the judge of the district court from time to time and communicated to the sheriff by the board of county commissioners."

Section 12-61-05 of the N.D.C.C. provides that the North Dakota Combined Law Enforcement Council shall recommend rules for the operation and maintenance of county and municipal jails and for the care and treatment of the inmates therein and further provides that the Council may inspect each jail at least once a year to determine if such rules have been complied with and allows counties and cities to enter into contracts with other governmental agencies for jail facilities.

When there is no jail in a county or where the jail is not sufficient, Section 12-44-29 provides that the inmate may be delivered to a jail of an adjoining county. The jailer of such adjoining county shall receive and keep the prisoner in the same manner as if he had been ordered, sentenced or delivered to him by an officer or court of his own county. With the exception of Section 12-44-04 which provides for the district court to prescribe rules for jails, the above-cited statutes are the only qualifications on Section 12-44-12, which places the sheriff in charge of the jail.

The facility in Devils Lake is, in fact, a joint law enforcement facility and is used by city, county and surrounding counties for jail purposes. This joint or cooperative action has apparently been accomplished pursuant to Section 54-40-08 which authorizes such an arrangement. We believe that the entity created to carry out the joint action authorized by Section 54-40-08 comes within the purview of "governmental agencies" contemplated by Section 12-61-05 and, thus, 12-61-05 and that the board or individual who has the authority under such arrangement to determine responsibility for administration of the joint jail facilities may legally do so and such determination would be dispositive of the question of who has charge of the jail facilities.

Sincerely,

ALLEN I. OLSON

Attorney General