

**OPINION**  
**47-71**

November 10, 1947            (OPINION)

County

RE: Use of County Jail by City

The letter signed jointly by you and Mr. Howard A. Moum, state's attorney, has been received and sent to my desk.

The city has power to establish a jail, both by section 40-0501(41) and 40-0502(5) of the 1943 Revised Code. If the city has no jail, it may, with the consent of the county commissioners, use the county jail for the confinement of persons charged with or convicted of a violation of the city ordinance. (Section 40-0501(41). However, the sheriff by virtue of his office has charge of the county jail. (Sections 11-1503 and 12-4412).

Upon a conviction before a police magistrate, the defendant may be committed by the magistrate to the county jail for the service of his sentence. (Section 40-1112).

It is our opinion, under these provisions, that the sheriff has charge of the jail and that he cannot be deprived of that by any action of the county board in consenting to the use of the jail by the city. However, if any person is arrested in a city charged with violation of a city ordinance, it is our opinion that the officer making the arrest can take the person to the jail, and it would be the duty of the jailer then to receive him and confine him until further order of the police magistrate. In other words, the chief of police, in our opinion, is not entitled to the use of the sheriff's office, or the jail, except with the consent and cooperation of the sheriff.

NELS G. JOHNSON

Attorney General