

**OPINION
52-80**

June 20, 1952 (OPINION)

INSTITUTIONS

RE: County Jail May Not Be Made Part of State Tuberculosis Hospital

Reference is made to your letter of June 6, 1952, wherein you state that the following resolution was passed by the board of county commissioners of Rolette County:

Tuberculosis being a communicable disease, and the County of Rolette does not have facilities for confining anyone who has contracted such illness, it was decided that - one, two-bedroom unit on each of the second, third and fourth floors of the first unit of the Infirmary Building at the State Tuberculosis Hospital at San Haven be designated as a division of the Rolette County Jail for the purpose of, and to be used as, a place of confinement, and treatment of those persons having Tuberculosis who evade treatment for the same by deserting or leaving the said Hospital before their illness is arrested. The said rooms to be designated and equipped at the discretion and under the supervision of the Superintendent in charge of the said Tuberculosis Hospital at San Haven, N.D."

You further state that the resolution was forwarded to the board of administration, which board took the following action:

It was moved by Mr. Foley, seconded by Mr. Braseth that the proposal of the Board of County Commissioners of Rolette County dated May 27, 1952, that certain rooms in the Infirmary Building at the Tuberculosis Sanatorium be designated as a part of the Rolette County jail as a place of confinement and treatment for tubercular patients who have violated quarantine orders and who insist on leaving the Sanatorium against medical advice; that said rooms be equipped and be under the supervision of the Superintendent of the Tuberculosis Sanatorium, provided that such designation as a place of confinement be approved by the office of the Attorney General of the State of North Dakota as legal and that before such designation be made, that the authorities of Rolette County obtain an opinion from the Attorney General as to its legality, be approved. Carried."

You, therefore, request an opinion from this office as to the legal propriety of such an arrangement.

Under section 23-0721 of the N.D.R.C. 1943 any person afflicted with a contagious or infectious disease, or who violates a state department of health regulation by exposing himself in any public place or thoroughfare, or who willfully violates any quarantine law, is guilty of a misdemeanor. A person convicted under this section could, therefore, be imprisoned in a county jail. It may, therefore, be contended that the proposed arrangement would be an effective way

of confining tubercular patients who violate quarantine orders and leave the sanatorium against medical advice. However, the statutes provide that the State Sanatorium shall be under the general control and management of the Board of Administration and the Board shall make all bylaws, rules, and regulations not inconsistent with the laws of this state, which are necessary for the government of such institutions and for the admission of persons thereto and the parole and discharge of persons therefrom, whereas section 12-4412 providing for the supervision of the county jails 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."

From a review of the statutes given above, it is apparent there is no provision for joint supervision which would be necessary to make the proposal effective.

It is our opinion that there would be a direct conflict with the statutes concerning the supervision of the Sanatorium and the county jails and therefore the proposed arrangement is unauthorized. From a review of the statutes governing the Sanatorium and the county jails, it is clear that many other conflicts would be encountered which would be incapable of solution or compromise. It is therefore our added opinion that the solution to the problem must be legislative or administrative and not by penal means.

ELMO T. CHRISTIANSON

Attorney General