

\*1 Office of the Attorney General  
State of Washington

AGLO 1982 No. 25  
November 10, 1982

OFFICES AND OFFICERS--COUNTY--SHERIFF--JAILS--ACCEPTANCE OF PRISONERS IN EXCESS OF  
JAIL CAPACITY

A county sheriff or director of a county department of corrections is not authorized to refuse to accept custody of persons ordered by a court of competent jurisdiction to be confined in a county jail, or to release other prisoners to make room for such persons, for the sole purpose of avoiding overcrowding in violation of state jail commission custodial care standards.

Honorable George Edensword-Breck  
Director, State Jail Commission  
110 East Fifth, Room 223, MS GB-12  
Olympia, Washington 98504

Dear Sir:

By recent letter you requested our opinion on a question which we paraphrase as follows:

Where a county sheriff or the director of a county department of corrections is presented with prisoners who have been confined to the county's correctional facility by a court order, and the acceptance of those prisoners would result in a violation of the State Jail Commission's custodial care standards relating to jail capacities and crowding, ". . . does such an official have a right and duty to determine not to accept or to release other prisoner(s) to avoid having the facility violate state requirements . . . directed to insure minimum constitutional conditions within the facility?

We answer the foregoing question in the negative.

ANALYSIS

It is fundamental that a county sheriff--or his counterpart, the director of a county department of corrections [\[FN1\]](#) -- has only those powers which have been granted to him, expressly or by necessary implication, by some state statute or constitutional provision. Accord, the general rule enunciated in such cases as [Pacific First Federal Savings and Loan Association v. Pierce County, 27 Wn.2d 347, 353, 178 P.2d 351 \(1947\)](#). And, if there is a doubt as to whether a particular power is granted, it must be denied. [Griggs v. Port of Tacoma, 150 Wash. 402, 273 Pac. 521 \(1928\)](#). [\[FN2\]](#)

We have, therefore, carefully reviewed the applicable statutes and constitutional provisions relating to the powers, functions and responsibilities of a county sheriff (see, in particular, chapter 36.28 RCW) or the director of a county department of corrections ([RCW 70.48.090](#))--as well as those contained in [RCW 70.48.030](#), et seq., relating to the State Jail Commission. We are, however, unable to find anything which would support such action as is, apparently, contemplated by your question. Simply stated, the fact that a given county jail may already be overcrowded (according to State Jail Commission standards) [\[FN3\]](#) would not justify a refusal by the sheriff or other custodian to accept prisoners duly ordered into his custody by a court of competent jurisdiction or, in the alternative, to release other prisoners already under confinement in order to make room for the new ones.

\*2 We trust that the foregoing will be of assistance to you.

Very truly yours,

Kenneth O. Eikenberry

Attorney General

Thomas J. Holcomb

Assistant Attorney General

[\[FN1\]](#) See [RCW 70.48.090](#).

[\[FN2\]](#) See also, AGLO 1981 No. 28, copy enclosed.

[\[FN3\]](#) To the extent your letter also alludes to the possibility of some court-ordered limitation on jail population--vis-a-vis a "conflicting" court order to accept custody of additional prisoners--we decline to respond in the abstract. Rather, in such a case, the answer would necessarily depend on the contents of the particular orders and the respective jurisdiction of the courts which entered them.

Wash. AGLO 1982 NO. 25, 1982 WL 172650 (Wash.A.G.)

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