

MAINE STATE LEGISLATURE

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December 5, 1963

Major Parker Hennessey

State Police

George C. West, Deputy

Attorney General

Use of Municipal Jails by State Police

Reference is made to a letter dated November 26, 1963, to Lieutenant McKenney from Maurice H. Benner, Chief Rockland Police Department.

FACTS:

The letter states that the use of the City of Rockland jail for detention of prisoners arrested by State Police officers is being refused after December 31, 1963.

QUESTION:

Does the City of Rockland have the right to refuse the State Police the use of the municipal jail?

ANSWER:

No.

OPINION:

A municipality is not sovereign. Frankfort v. Waldo Lumber Co. 128 Me. 4. It is a subdivision of the state. Chase v. Litchfield, 134 Me. 128. It is a mere local agency of the state, Baxter v. Waterville Sewerage District, 146 Me. 218.

A municipality has two distinct functions, one as a corporation for the particular benefit of its inhabitants, the other as a governmental agency for the general benefit of the public.

To corporate capacity belong performance of acts of private character, such as management of property or rights held for profit and advantage as corporation, although ultimately inuring to public, such as ownership and management of real estate, making contracts, right to sue and be sued; to latter discharge of duties imposed by law for the public benefit, such as support of poor, maintenance of schools, construction and maintenance of highways and bridges, assessment and collection of taxes. See Libby v. Portland, 105 Me. 372.

Hence, our Supreme Judicial Court has held in more than one case that the office of city marshal is not a corporate, nor even a municipal office. He has to preserve the public peace, the peace of the state. The city marshal or any municipal police officer must enforce the laws of the state. They are then essentially state officers. See Andrews v. King, 77 Me. 230.

Again in Moriarty's Case, 126 Me. 358 @ 359, the court said:

"The principal duty of police officers, viz., the preservation of the public peace within certain territorial limits, is a matter of public concern, and hence policemen are properly designated as state or public officers.

"It is usual for police officers to be appointed by cities and towns, or by designated officials in cities or towns, in virtue of delegation of power by the State; but the power to appoint can be entrusted to any other political agency.

"Police officers find their authority in the statute book. In executing authority, policemen are free from control by the appointing power, notwithstanding the municipalities in which they serve are required to pay them."

From this foundation it is only logical that the court would build to the same conclusion relative to a municipal "lock up" or jail. Mains v. Fort Fairfield, 99 Me. 177.

In that case the Town of Fort Fairfield had built a two-story building. The ground floor was for use as a "lock up" or town jail; the second story was for a court room. Little or no care was taken of the lower story and it had become foul, offensive and unhealthy to persons who might be confined therein. Plaintiff was arrested one evening by the local constable and confined in the "lock up." He suffered injury because of such confinement and brought suit against the town.

The court, after calling attention to the dual functions stated above, said:

"In this case the building was not erected nor used for any strictly municipal purpose, but only for the public purpose of aiding in maintaining the public peace and dispensing public justice. Court-rooms and jails are public

instrumentalities. The care of them is a public function or duty. Whoever is charged by law with that care is a public officer whether appointed by the town or by the governor. He is not the agent of the appointing power, and that power is not pecuniarily liable for his neglect or misdeeds. Granting it to be the legal duty of the selectmen of Fort Fairfield to care for this lock up and keep it clean and healthy, it is a public duty to be performed for the public, the state, and not for the town. The duty is of the same kind as the duty to care for the public roads, or the public health, or the public order, in which cases it has been held, too often to require citation, that the town is not liable for the neglect or misconduct of its appointees. Everything relating to public order or peace, including police officers, courtrooms and jails, is of state concern, and the duties of towns, and of officers appointed by towns, in relation to these matters are public duties. The town is not liable in a civil action in either case unless made so by express statute.

"By parity of reasoning the town is not liable for the action of the constable in confining the plaintiff in such an unhealthy place. The constable though appointed by the town was not its agent. He was a public officer, as much so as a sheriff. In the arrest and confinement of the plaintiff he assumed to exercise an authority conferred upon him by the state and not by the town. He acted in behalf of the state and not in behalf of the town."

A jail is a place for the confinement and detention of persons charged with a crime. A crime being a violation of the public peace and a violation of a state statute, (or in rare cases a municipal ordinance) is a matter of public concern.

Hence, the conclusion is inescapable that it is in the public interest and concern that jails be available for such confinement or detention. It matters not what law enforcement officer makes the arrest. Be he a constable, municipal police officer, sheriff, deputy sheriff or state police officer, he is "a state or public officer." Such arresting officer has the right and duty to place the arrested person in any jail until bail is granted or a hearing is held by the proper court.

Major Parker Hennessey

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December 5, 1963

A municipality having provided a jail for the detention and confinement of persons accused of crimes cannot refuse use of the same to any specific or particular class of law enforcement officers.

George C. West
Deputy Attorney General

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