

OFFICIAL OPINION NO. 35

December 14, 1970

Robert K. Konkle, Superintendent
Indiana State Police Department
Indiana State Office Building
100 North Senate Avenue
Indianapolis, Indiana 46204

Dear Superintendent Konkle:

This is in response to your request for my Official Opinion concerning refusals by certain jail keepers to accept prisoners for incarceration when tendered by arresting state police officers, in view of Acts of 1945, Ch. 344, Sec. 22, as found in Burns' (1956 Repl.), Section 47-867.

Your specific questions concerning the problems caused by such refusals to accept a prisoner are as follows:

1.) "Once a prisoner is delivered to a jail by a state police officer, can the sheriff refuse responsibility for the prisoner?

2.) "Can the fact that the jail is full be grounds to refuse to accept a prisoner?

3.) "Can the sheriff require a commitment from a court before accepting a prisoner who has been arrested by a state police officer:

(a) upon probable cause but without a warrant,

(b) with a warrant for the person's arrest,

(c) for a misdemeanor, or,

(d) for a felony?

4.) "If the sheriff refuses to accept a prisoner, what remedy is available?"

ANALYSIS

The state police statute in question [Acts of 1945, Ch. 344, Sec. 22, as found in Burns' (1956 Repl.), Section 47-867], reads as follows:

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“Any person having charge of a jail, prison or reformatory or other place of detention shall receive any prisoner arrested by a police employee of the department within the jurisdiction served by such jail, and shall detain him in custody until otherwise ordered by a court of competent jurisdiction, or by the superintendent; and such person who shall refuse to so receive any prisoner or who, having received him, shall release him otherwise than as above specified, shall be subject to removal from office by the governor.”

In answer to your first question, this statute speaks in mandatory language of the duties of the keeper of a place of detention. The statute specifically requires that “any person having charge of a jail, prison, reformatory or other place of detention *shall* receive any prisoner arrested by a police employee of the [state police] department.”

The use of the word “shall” in a statute clearly denotes “a mandatory duty—not a discretionary one,” *Ballard v. Board of Commissioners of Gibson Co.* (1955), 125 Ind. App. 194, 123 N. E. (2d) 650. Thus, the keeper of the jail, prison, or other place of detention is allowed absolutely no discretion in determining which persons shall not be detained in his jail; he must incarcerate any prisoner tendered to him for detention by a police employee of the jurisdiction, and his failure to do so may subject him to removal from office by the Governor.

In answer to your second question, the fact that the jails in certain jurisdictions in the state may be full at a given time can in no way justify the refusal to incarcerate persons arrested for violating the law. The keeper of the jail is still required to handle the situation with the reasonable care deemed necessary under the circumstances; however, at no time should he refuse to accept for detention any prisoner who has been arrested by a “police employee of the [state police] department within the jurisdiction served by such jail.”

Concerning your third question, the answer is “no” to all four parts of that question. A sheriff or jail keeper may *not* require a commitment from a court before accepting a pris-

oner for the simple reason that it is neither legally required nor practically possible in all cases for an arrested person to be taken before a magistrate immediately subsequent to his arrest. Indiana law only requires that the arrested person's appearance before a magistrate take place as soon as practicable under *all* the circumstances, yet limited to an appearance during the usual hours for conducting court. *McClanahan v. State* (1953), 232 Ind. 567, 112 N. E. (2d) 575.

In response to your final question, the alternative practical remedies reasonably available to an officer who is confronted with such a situation would be to take his prisoner to the nearest jail adjoining that county for safekeeping to hold the prisoner until court convenes. Of course, should this situation arise, the police officer should immediately notify the Governor's office of the refusal to accept the prisoner.

CONCLUSION

It is my official opinion that the law of Indiana specifically requires a sheriff or any other person who may be in charge of a jail or prison to accept all prisoners duly tendered to him for detention by the proper law enforcement officials, and failure to do so constitutes statutory grounds for the Governor to remove said individual from office.