

it is not entitled to same in the absence of charter authority or the consent of the mayor and governing body.

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Attorney General.

760628.2

CORRECTIONAL INSTITUTIONS: Inmate labor

COUNTIES: Resolution requiring inmates to perform manual labor

SHERIFF: Inmate labor

WORKER'S DISABILITY COMPENSATION ACT: Injuries to county prisoners performing work

A board of commissioners of a county may, by resolution, order prisoners under sentence in a county jail to work upon public projects.

A sheriff may not compel prisoners in his custody to work on public projects in the absence of a resolution by the board of commissioners requiring him to do so.

As custodian of prisoners in his custody, the sheriff may permit prisoners to work on public projects voluntarily.

A county is not liable under the worker's disability compensation act for injuries or illness incurred by county prisoners who suffer injuries or illness in the course of performing labor as a prisoner.

Opinion No. 5061

June 28, 1976.

Hon. Joseph P. Swallow
Circuit Judge
26th Judicial Circuit
Alpena, Michigan

You have requested my opinion on the following questions:

1. Does a sheriff have the authority to promulgate rules requiring county inmates to work on public projects?
2. If not, could inmates volunteer to work on these projects?
3. What liability, if any, could the county incur under the Worker's Disability Compensation Act of 1969, should an inmate be injured working on a county project?

While a sheriff is the custodian of prisoners confined within county jails, RS 1846, c 14, § 75, as amended by 1952 PA 110, § 75; MCLA 51.75; MSA 5.868, the sheriff, as custodian, is not empowered to require county inmates to work on public projects. The power to authorize involuntary inmate work on such projects, by statute, lies solely in the county board of supervisors. The applicable enactment, RS 1846, c 171, § 10, as amended by 1960 PA 71, § 10; MCLA 801.10; MSA 28.1730 reads:

"The board of supervisors¹ of any county, by resolution passed at any regular or special session, may order that male prisoners over the age of 18 years under a sentence of imprisonment in the county jail, capable of performing manual labor, shall be required to work upon the public highways, streets, alleys and public roads, or in any quarry, pit or yard in the preparation or construction of materials for such public highways, streets, alleys or roads in such county, or to perform any other lawful labor for the benefit of the county. Whenever any such resolution is passed, the sheriff shall cause such prisoners to be put at work in the manner provided in the resolution of the board of supervisors. The county road commission and the village or city authorities of any village or city in the county or the authorities in charge of any county institution may make application to have such prisoners work in any township, city, village or institution in such manner as shall be prescribed by board of supervisors, and the board shall determine in what township, city or village such prisoners shall work."

Upon board resolution, the sheriff has the duty to compel inmates to work, but only in the manner provided in the resolution itself. In OAG, 1915, p 158 (August 25, 1914), this office declared:

"Without going into the matter in detail, while the Sheriff of a County is the legal custodian of the prisoners sentenced to the County Jail and has the power to discipline their actions and may, I believe with propriety, permit certain ones to leave the confines of the jail for the purpose of some mild exercise, he would have no right to take the prisoners from the jail and work them for his own profit or for the profit of others. Provision is made by the statute, however, that the Sheriff may and shall, under the direction of the Board of Supervisors of the County, if the proper legal steps have been taken preliminary thereto, work prisoners of the County jail upon certain State and County road highways for the benefit of the public."

It is my opinion that pursuant to the explicit legislative authority outlined in RS 1846, c 171, § 10, *supra*, providing for the procedure in which inmates can be required to work on public projects, the sheriff may not compel prisoners to work on county projects without prior board resolution.

I have found no authority as to whether the sheriff, pursuant to his authority as custodian, 1952 PA 110, § 75, *supra*, without prior board resolution, may allow volunteer inmates to work on public projects for the benefit of the community. RS 1846, c 171, § 10, *supra*, speaks only to the procedure for compulsory inmate work on public projects and therefore is not dispositive of the instant question.

However, in *Leach v Whitbeck*, 151 Mich 327, 335; 115 NW 253 (1908) it was noted that:

"The court recognizes that a sheriff has a discretion in regard to the care and treatment of prisoners held by him upon both criminal and civil process. . . ."

¹ Now entitled board of commissioners. 1966 PA 261, § 16, as added by 1969 PA 137; MCLA 46.416; MSA 5.359(16).

It is therefore my opinion that, in the absence of any specific prohibition, a sheriff has the authority to allow volunteer inmates to work on public projects.

In regard to your question dealing with liability under the Worker's Disability Compensation Act of 1969, it is clear that a prisoner working on a public project for the benefit of the county is not entitled to recover under the said compensation act. 1969 PA 317 *et seq*; MCLA 418.101 *et seq*; MSA 17.237(101) *et seq*. In OAG, 1958, Vol 2, No 3160, p 1 (January 6, 1958), this office declared:

"A county is not exposed to liability under the provisions of the Michigan workmen's compensation law for injuries or illness incurred by county prisoners performing lawful labor for the benefit of the county. Section 7 of that act contemplates that a contractual employer-employee relationship must exist if compensation is to be recovered under the statute. No such contractual relationship exists between a prisoner and a county. The servitude of a prisoner is compulsory, not voluntary, and the prisoner cannot be held to be an employee of the county."

The same conclusion was also reached in OAG, 1928-1930, p 135 (October 30, 1928).

Further, in *Prisoners' Labor Union at Marquette v Department of Corrections*, 61 Mich App 328, 336; 232 NW2d 699 (1975), the Court stated that the relationship between inmates and the Department of Corrections is not an employment relationship, but rather a custodial, rehabilitative relationship with employment utilized as a means to reach those ends.

It is therefore my opinion that a county is not exposed to liability under the Worker's Disability Compensation Act of 1969 for inmate work-related injury.

FRANK J. KELLEY,
Attorney General.

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PRIVACY: School records

PARENT AND CHILD: Rights of divorced parent without custody to school records of child

A board of education may not refuse to disclose the school records of a child to the child's divorced parent on the ground that the divorced parent does not have custody of the child.

Opinion No. 5027

June 30, 1976.

Honorable Earl E. Nelson
State Senator
The State Capitol
Lansing, Michigan 48901

You have requested my opinion on a question which may be stated as follows: