IN THE CIRCUIT COURT OF MISSISSIPPI COUNTY, ARKANSAS
CHICKASAWBA DISTRICT
CIVIL DIVISION

MISSISSIPPI COUNTY, ARKANSAS — **PLAINTIFF/ COUNTER-DEFENDANT**

Vs. — **No. 47BCV-2014-17**

CITY OF BLYTHEVILLE, ARKANSAS — **DEFENDANT/ COUNTER-PLAINTIFF**

And

CITIES OF DELL, MANILA and LEACHVILLE, ARKANSAS — **INVOLUNTARY COUNTER-PLAINTIFFS**

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Now on this 20th day of January, 2016, the court after having held a hearing on Cross-Motions for Summary Judgment on November 23, 2015, and after having received additional briefs on the issues in this case, and after considering the Motions, Responses, Affidavits and Briefs and the entire file in this case finds:

1. Collateral Estoppel and Res judicata do not apply to this case and even if they did, the court finds that there is a clear and convincing need for a new determination of the issue because of the potential adverse impact of the determination on the public interest;
2. The outcome of the issues in this case will not only have an effect on the parties to this litigation but could have an impact on counties and cities all over Arkansas;
3. That an issue of fact exists as to what should be considered in determining the reasonable expenses of the County in housing prisoners;
4. The remaining issue before the Court is the interpretation of Arkansas Code Annotated section 12-41-506 in its use of the phrase "prisoners of municipalities."

What is a "prisoner of a municipality?" Ballentine's Law Dictionary, pg. 991 (3rd ed 1969) defines "prisoner" as "A person deprived of his liberty by virtue of a judicial or other lawful process." Merriam-Webster defines "prisoner" as "a person deprived of liberty and kept under involuntary restraint, confinement or custody." A.C.A. Sec. 12-41-506 provides in part:

> (a) (1) In the absence of an agreement on jail costs between a county and all municipalities having law enforcement agencies in the county, the quorum court in a county . . . may by ordinance establish a daily fee to be charged municipalities for keeping ***prisoners of municipalities*** in the county jail. (emphasis added)

This court is asked to interpret and declare the meaning of the phrase "prisoners of municipalities" as it is used in the above statute. It is not the role of this court (or any court) to decide what this phrase in fairness "ought to mean" or how this judge (or any judge) believes the phrase should be used. It is this court's role to try and discern what the legislature intended in using the phrase.

A court must construe a statute just as it reads, giving the words their ordinary and usually accepted meaning. *Gonzales v. City of DeWitt*, 357 Ark. 10, 159 S.W.3d 298 (2004). If the language of a statute is plain and unambiguous, then the analysis need go no further; the intent must be gathered from the plain meaning of the language used. *Moon v. Citty et al*, 344 Ark. 500, 42 S.W.3d 459 (2001). If the court simply uses the definition of prisoner of the recognized dictionaries referred to above it appears to the court that a "prisoner of a municipality" would be any person who is deprived of his liberty by a "municipal officer." This definition of "prisoner of a municipality" would include persons arrested on municipal ordinance violations, persons arrested by city officers for state misdemeanors, persons arrested by city officers for felonies, persons arrested by city officers on warrants issued by the courts on misdemeanors occurring outside the city limits and persons arrested by city officers on felony warrants from other jurisdictions. It is apparent from the language of the statute itself that the legislature did not intend for the phrase "prisoners of municipalities" to sweep so broadly and no party to this action has argued for such a broad sweep.

The Cities initially argued that under the statute, a "prisoners of municipalities" only included persons who had been convicted and sentenced to jail for violating a municipal ordinance but not until they were sentenced. The City in its supplemental briefing requested by the court concedes that "prisoners of municipalities" includes any person arrested for a violation of a municipal ordinance and jailed, both pre- and post-conviction. The County argues that the court should adopt the definition used by Judge David Laser in a case out arising

between many of the same parties in this county in Case Number CV 2003-46. In that case the court entered an Order December 22, 2003 defining term "prisoners of municipalities" as follows:

> *Prisoners of municipalities shall include persons housed in the county jail by virtue of a pending misdemeanor charge that is pending on a city docket or a municipal docket of any court, whereby the fine revenue that would be owed by the prisoner, if convicted, would be paid to the city or municipality and not to the county.*

In later filings (after this court ruled that collateral estoppel and res judicata did not apply) the County has argued that "prisoners of municipalities" should include all prisoners that the city arrests and delivers to the county jail for incarceration, from the point of intake into the county jail until (1) formal charging by the prosecuting attorney on a felony, (2) until sentencing on a misdemeanor, and (3) until release on a municipal ordinance violation. This definition proposed by the County is derived from one of the Arkansas Attorney General's opinions. It is clear from the multiple definitions proposed by the parties that there is a clear ambiguity in what is meant by the phrase "prisoners of municipalities."

In interpreting legislation (when there is a need to look beyond the plain language), it is proper to look at a number of things in addition to the express language of the act including the subject matter, the object to be accomplished by the act, the purpose to be served, the underlying policies, the remedies provided, and the consequences of various interpretations.

Express provisions of Act:

12-41-506. Expenses of municipal prisoners held in county jails.

> (a)(1) In the absence of an agreement on jail costs between a county and all municipalities having law enforcement agencies in the county, the quorum court in a county in this state may by ordinance establish a daily fee to be charged municipalities for keeping *prisoners of municipalities* in the county jail.
> (2) The fee shall be based upon the reasonable expenses which the county incurs in keeping such prisoners in the county jail.

(b)(1) *Municipalities whose prisoners are maintained in the county jail shall be responsible for paying the fee established by the quorum court in the county.*
(2) When a person is sentenced to a county jail for violating a **municipal ordinance**, the municipality shall be responsible for paying the fee established by an agreement or ordinance of the quorum court in the county.
(3) Municipalities may appropriate funds to assist the county in the maintenance and operation of the county jail.

(emphasis added) It is clear that the subject matter, the object of the act and the purpose are all intertwined. The title of the statute makes it clear that it deals with the expense that the counties bear for housing prisoners of municipalities. It is also clear that the legislature intended for the cities to pay the expense (or at least a reasonable portion of the expense) of housing "municipal prisoners." What is not so clear is what the legislature intended by the phrase "prisoners of municipalities." The County points to two Circuit Court cases as authority and argues that these two courts defined municipal prisoners in accordance with the County's proposed definition in this case. A close reading of the definitions adopted by those courts reveal that different definitions were used. In the Jefferson County case the court defined a "prisoners of municipalities" to include persons arrested for felonies by city officers until formal charges were filed against them. In the Mississippi County case the definition only dealt with misdemeanors and did not include anyone arrested for a felony. In addition, ACA sec 16-17-707 provides that the city is allowed to retain all fines arising from cases where a city officer OR STATE POLICE OFFICER makes a misdemeanor arrest within the city limits. It is clear to the court that what entity keeps the fine money cannot be determinative of what are "prisoners of municipalities" when it would take a contortionist to conclude that "prisoners of municipalities" would be defined to include a person arrested by a State Police Officer for a violation of State Law in a city.

At the hearing on the cross motions for Summary Judgment I expressed a certain amount of disdain for the argument that I should look to the opinions of the Arkansas Attorney General for guidance on this issue. After re-reading the briefs provided the court on the cross-motions for Summary Judgment and reading the supplemental briefs provided the court I concluded that I should consider them in

the hope they would provide the court some guidance on this issue. Between 1991 and 2009 there have been at least 12 opinions issued by the Arkansas Attorney General addressing the question, what is a" municipal prisoner" within the meaning of ACA section 12-41-506. In several of these Opinion the Attorney General suggested the legislature should act to clarify this issue. In urging the court to use the definition crafted by the Attorney General the county argues that the legislature must agree with the Attorney General's definition because it has not seen fit to clarify the statute. Interestingly, the Arkansas Attorney General in 2001 in addressing this question opined that a person arrested for a "felony offense" was not a "municipal prisoner" under the 12-41-506 because the City had no authority to prosecute the case. This opinion of the AG remained as the official position of the Attorney General's office until 2009 when the Attorney General in addressing the 2001 Opinion stated:

> It is my opinion that this reasoning, if limited to felonies, creates an inconsistency in our definition of a municipal prisoner. This is because the same reasoning appears to apply to prisoners accused of state law misdemeanors. While state law misdemeanors occurring within city limits may be prosecuted by the person of the city attorney, such prosecutions are always in the name of the state.

The Attorney General in 2009 did not question the 2001 Attorney General's logic or reasoning. He did not analyze the legislative intent other than to say that for many years the legislature had acquiesced in the "traditional definition" of "municipal prisoner" given by the Attorney General's office and therefore it must be correct. For a period of 8 years the counties and cities were provided a definition of "municipal prisoner" that a felon was not a municipal prisoner and the legislature did not act to provide a definition that was different or to clarify the definition. It seems to the court that the same argument can be made to support the 2009 opinion.

It appears to the court that the various Attorneys General were providing a definition that they thought was reasonable and fair to both the cities and the counties. The state, for approximately twenty-five (25) years, has been moving away from having the costs of the judicial system born locally. In the early 1980's the salaries of the deputy prosecuting attorneys and public defenders were all the responsibility of the respective counties. Jurors were paid exclusively by the counties. In some counties jurors were paid as little as $5.00 per day while in other counties they were paid as much as $20.00 per day. The few Circuit Judges who

had assistants had to rely on the counties to fund those positions. The State legislature began to recognize the inequity in having the quality of justice depend on which county you lived in. This discussion is only marginally relevant to the issue at hand but is provided to illustrate the problems that persist in larger political entities passing costs on to smaller political entities. For example, should a victim of a crime receive different "justice" depending on whether the "victim" lives in a city that can afford the costs of incarcerating a person charged with a misdemeanor crime. A crime occurring in Dyess is not just a crime against the people of Dyess. It is a crime against the people of Mississippi County and ultimately the people of the state of Arkansas. All of the above is well and good but ultimately this question is one that is a "legislative" question that should be addressed by the legislature. In today's judiciary we too often forget our role and try to make the law what we as judges think it ought to be. That is not my role. That being said, since the legislature has not acted to provide a definition of the phrase "prisoners of municipalities" it is now incumbent upon this court to attempt to discern the intent of the legislature in using this phrase. The positions taken by the various Attorneys General and the two courts that have faced this issue are fair and reasonable definitions but to conclude the legislature intended what is included in those definitions defies logic. This court finds and holds that "prisoners of municipalities" are those persons arrested and jailed for violations of city ordinances. A violation of State law is a violation against the peace and dignity of the State of Arkansas and any prosecution of that crime is to be in the name of the State of Arkansas by law and court rule.

The court therefor grants in part and denies in part the Motions for Summary Judgment.

IT IS SO ORDERED and DECLARED.

John N. Fogleman, Circuit Judge