



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

February 7, 1975

Opinion No. 75- 44

Mr. Mickey C. Moorman
Assistant County Attorney
Labette County Courthouse
Oswego, Kansas 67356

Dear Mr. Moorman:

You inquire concerning liability of the county for medical care rendered to one William E. Love, for injuries sustained on September 22, 1974, when, while an inmate and trustee of the Labette County jail, he raised a ceiling tile in the trustee area of the jail, crawled through the space above the ceiling to enter a storage room outside the locked section of the jail. He attempted to escape by jumping from the window of this room, but failed in the attempt, the window being on the fourth floor of the building. In the fall, he suffered a broken leg and other injuries, and was taken to the Mt. Carmel Hospital at Pittsburg, for treatment and care for other possible injuries. He was treated there for nine days at which time he was released. Due to lack of facilities in the jail to care for him with a pinned leg cast, he was taken to his residence. He had completed ten months of the one year sentence, and after his attempted escape and transportation to the hospital, he was not again taken into custody, and no guard was maintained to assure his safekeeping while hospitalized or thereafter.

You advise that the hospital and doctors involved in the treatment of Mr. Love have forwarded the bills for this care to the county, and you inquire concerning the liability of the county for these bills.

I enclose a copy of Opinion No. 74-176, issued June 7, 1974, concerning the general question of liability of the county for emergency medical treatment furnished prisoners held in the county jail. However, in our view, the principles and conclusions set forth in that opinion do not apply to the factual circumstances described above. When the injuries were sustained, the prisoner

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was not in custody. He had escaped from the custody and control of the jailer, and was, for all legal and practical purposes, at large. See, e.g., 27 Am.Jur.2d, Escape, § 1 at p. 849. After he was injured in the fall, he was not again taken into custody of the sheriff. He was transported to the hospital, where he was not held under guard. At the end of nine days, he was released therefrom, and permitted to return to his home. For all legal and practical purposes Mr. Love was not at the time the injuries were suffered, or at the time care and treatment was provided thereafter, in the legal custody of the county.

Having lost custody of the prisoner, and not having retaken custody, the county bears no legal authority, in our view, for the cost of care and treatment provided Long after his attempted escape.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

Enclosure