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ATTORNEY GENERAL OPINION NO. 84- 25

Howard Schwartz  
Judicial Administrator  
Kansas Judicial Center  
Topeka, Kansas 66612

Re: Criminal Procedure--Costs in Criminal Cases--  
Liability for Costs

Cities and Municipalities--Code for Municipal  
Courts; General Provisions--Costs

Synopsis: There is no statutory authority whereby a district magistrate judge or municipal court judge may assess a defendant for "room and board" costs associated with his or her confinement in a city or county jail. However, where the legislature enacts a statute so providing, the state or a subdivision thereof may initiate proceedings against a prisoner for reimbursement of the expenses attributable to his incarceration. Cited herein: K.S.A. 1983 Supp. 8-1008, 8-1567, K.S.A. 12-4106, 12-4112, 12-4411, 12-4509, 21-4603, K.S.A. 1983 Supp. 22-3801, K.S.A. 22-3803, 28-172a(d).

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Dear Mr. Schwartz:

You request our opinion as to whether a convicted defendant, in addition to the imposition of fines, costs and rehabilitative treatment, may be sentenced and compelled to reimburse the county (or city), on a fixed rate per diem basis, the costs (room and board) incurred by jailing authorities involved in his confinement. Specifically, you ask whether municipal court judges or district magistrate judges may impose such a "sentence" in "drug and alcohol related cases."

With regard to sentencing in district court, a district magistrate judge may impose the term of confinement or fine applicable to the offense (K.S.A. 21-4603), and the judge is required to tax the costs against the defendant. K.S.A. 1983 Supp. 22-3801(a) and K.S.A. 22-3803. Such costs include, but are not limited to, the docket fee, fees for service of process outside the state, witness fees, fees for transcripts and depositions, costs from other courts, doctor's fees and examination and evaluation fees. K.S.A. 1983 Supp. 28-172a(d). It is to be noted that each of the specifically enumerated costs set forth in K.S.A. 1983 Supp. 28-172a(d) is incurred during the course of a judicial proceeding. Pursuant to the rule of ejusdem generis (see Trego Wakeeney State Bank v. Maier, 214 Kan. 169, 174 (1974)), it is our opinion that the general authority to tax costs in a criminal case, as set forth in K.S.A. 28-172a(d), must be construed as applying only to costs incurred in the course of a judicial proceeding, and does not include authority to impose liability for costs associated with confining a convicted defendant.

In regard to sentencing in municipal court, a municipal judge may impose the term of confinement or fine authorized for the ordinance violation (K.S.A. 12-4509 and 12-4106), and may assess fees and mileage of witnesses against a convicted defendant under certain circumstances. K.S.A. 12-4112 and 12-4411. However, there is no provision of the Kansas Code of Procedure for Municipal Courts which authorizes a municipal judge to assess "room and board" charges against a defendant who is sentenced to imprisonment in the city jail.

Finally, as you are aware, K.S.A. 1983 Supp. 8-1567 prescribes penalties for driving under the influence of alcohol, and provides that cities may prohibit such conduct by ordinance, as long as the minimum penalty for the ordinance violation conforms to the minimum penalty prescribed by the statute, and the maximum penalty does not exceed the maximum penalty set forth in the statute. Further, K.S.A. 1983 Supp. 8-1567 prescribes terms of imprisonment and fines which may be imposed, and, by reference to K.S.A. 1983 Supp. 8-1008, requires a judge to assess the cost of alcohol and drug education and treatment programs, and presentence evaluation reports, against a convicted defendant. However, said statute does not authorize a judge to assess "room and board" charges against a convicted defendant who is sentenced to imprisonment in a city or county jail.

In summary, it is our opinion that there is no statutory authority whereby a district magistrate judge or municipal court judge may

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assess a defendant for "room and board" costs associated with his or her confinement in a city or county jail.

Although what has been said above is dispositive of the question raised, we are impelled to note that, where the legislature enacts a statute so providing, the state or a subdivision thereof may initiate proceedings against a prisoner for reimbursement of the expenses attributable to his or her incarceration. See 72 C.J.S., Prisons §26(e); 139 A.L.R. 1028; McAuliffe v. Carlson, 377 F.Supp. 896, 900 (1974).

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
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RTS:BJS:TRH:jm