

FILE

Subject

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STATE OF KANSAS

Office of the Attorney General

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VERN MILLER
Attorney General

June 7, 1974

Opinion No. 74- 176

Mr. Joseph W. Zima
Legal Advisor
Shawnee County Sheriff's Department
Courthouse
Topeka, Kansas 66603

Re: Liability of County for Cost of Medical
Treatment Furnished Prisoners in County
Jail

Dear Mr. Zima:

With your letter of April 2, 1974, you inquire as to the liability of the county for the cost of medical services provided for a prisoner in the county jail.

A prisoner whether confined in the county jail or a state institution has a right to medical care (Edwards v. Dunn, 355 F.2d 993), and a denial of such care may constitute a denial of rights guaranteed by the 14th Amendment. (Stiltner v. Rhay, 371 F.2d 420, cert. den., 387 U.S. 922.) The Kansas Legislature in a statute dating back to early statehood days has loosely recognized that principle, and it is said in K.S.A. 19-1919 that prisoners shall be treated with humanity. The case of Pfannenstiel v. Doerfler, 152 Kan. 479, announced the rule that failure or refusal of a sheriff or other officer having custody of a prisoner to provide or make effort to provide medical attention which is plainly and urgently needed constitutes failure to discharge faithfully and "with humanity" the duties imposed upon him.

See also the case of City of Topeka v. Boutwell, 53 Kan. 20, 32, 35 Pac. 819, where it is said: "It is the duty of all keepers of jails and prisons to treat their prisoners humanely." In addition, K.S.A. 1973 Supp. 21-3425 provides criminal penalties for those who may mistreat a prisoner.

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"Mistreatment of a confined person. Mis-treatment of a confined person is the intentional abuse, neglect or ill-treatment of any person who is physically disabled or mentally ill or whose detention or confinement is involuntary, by any law enforcement officer or by any person in charge of or employed by the owner or operator of any correctional institution or any public or private hospital or nursing home.

"Mistreatment of a confined person is a class A misdemeanor."

In the case of Levier v. State, 209 Kan. 442, 497 P.2d 265, the court takes the opportunity to review norms which have been established as to the rights of persons confined under conviction of a crime. After reviewing several decisions and former and present statutes, the court makes the following observation:

"Thus we see legislative concern as to the rights of prisoners in confinement has been increasingly evinced virtually since statehood.

"The essence of the foregoing was well expressed in Coffin v. Reichard, 143 F.2d 443 (6CA, 1944), in the following language:

'A prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law. While the law does take his liberty and imposes a duty of servitude and observance of discipline for his regulation and that of other prisoners, it does not deny his right to personal security against unlawful invasion.'
(p. 445.)

"Moreover, we think that such rights include entitlement to adequate food, light, clothing, medical care and treatment, sanitary facilities, reasonable opportunity for physical exercise and protection against physical or psychological abuse or unnecessary indignity--in short, the basic necessities of civilized existence."

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Unquestionably then, a person has a right to medical care. The problem is whether this right establishes a correlative duty on the part of the county to pay the cost of such treatment.

It is said that there is no rule at law or in equity which requires that the county pay for the cost of medical services rendered prisoners (Am. Jur.2d, Penal and Correctional Institutions, §16). However, this rule may be modified with respect to prisoners who are insolvent and unable to pay for needed medical services. It is also said in Am. Jur.2d, that:

"The care of the state for its dependent classes is considered by all enlightened people as a measure of its civilization, and the care of the poor is generally recognized as among the unquestioned objects of public duty." (Am. Jur.2d, Welfare Laws, §1.)

A solution to a similar problem is seen in the case of City of Tulsa v. Hillcrest Medical Center, Okla., 292 P.2d 430, where it is recognized that the city has an obligation to pay the cost of medical services rendered its indigent prisoners:

"We conclude that the services rendered by the plaintiff were proper charges against the City under the facts in this case. This is not to say, and we do not hold, that the governing board of the city may not exercise control in the matter of furnishing medical treatment for its prisoners if such board adopts plans and makes provision therefor. We do hold that the Chief of Police is under a duty to provide necessary medical treatment for prisoners in his custody, and in the absence of arrangements made by the Mayor and City Commissioners for necessary medical services for such prisoners, the City is liable for necessary medical services obtained by its Chief of Police in the care of indigent city prisoners."

See also the case of City of Tulsa v. Sisler, 285 P.2d 422, 423, where the same court held:

"So long as they were under arrest and held as city prisoners, it was the responsibility of the police to keep them safely and this included the duty to furnish them with necessary medical care."

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In both opinions the court views the duty to provide medical care as establishing a requirement that the city pay for the treatment where the prisoner is indigent and unable to do so. Thus it may be said that the right and power to incarcerate carries with it the duty to provide for the health and well-being of these persons incarcerated and this would include the duty to provide medical care. However, in many instances, the obligation to provide medical care cannot be satisfied by merely providing the opportunity for the prisoner to seek medical treatment. Rather, if the prisoner is unable to pay, then in order to satisfy its duty to provide medical care, the county must also pay the cost of that care.

In conclusion then, we are of the opinion that the county must bear the expense of necessary medical services provided for a prisoner in the county jail if the prisoner is indigent. In essence, although there is no statute which specifically details the county's obligation in this respect, this conclusion is based upon what we consider to be duties imposed by implication by K.S.A. 19-1919, specifically, that portion of the statute which requires that prisoners be treated "with humanity." Since it is uniformly held that a prisoner has a right to medical treatment, it is difficult not to extend that principle to conclude that in order to preserve that right, the county must bear the cost of necessary medical services rendered when the prisoner is indigent and, therefore, unable to pay the cost thereof.

Very truly yours,



VERN MILLER
Attorney General

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