



STATE OF KANSAS

## Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

**Curt T. Schneider**  
Attorney General

October 5, 1977

ATTORNEY GENERAL OPINION NO. 77-325

Mr. Robert G. Frey  
Frey, Smith, and Schmidt  
Haskell County Counselor  
412 North Washington  
Liberal, Kansas 67901

Re: Counties--Prisoners--Medical Care

Synopsis: The cost of medical treatment provided an individual not under arrest nor in the custody of the sheriff is not the obligation of the county.

\* \* \*

Dear Mr. Frey:

As Haskell County Counselor you inquire concerning the liability of Haskell County for medical treatment rendered one Raul Medina as a result of an automobile accident on June 17, 1977. You state that subsequent to said accident Mr. Medina took without permission a second vehicle. Mr. Medina was apprehended by the Sheriff and taken to the Garden City Medical Center for treatment of his injuries suffered in the automobile accident. Mr. Medina was not placed under arrest at this time. On June 24, 1977, Mr. Medina was released from the Garden City Hospital and the Sheriff took him into custody and Mr. Medina was formally charged with violation of K.S.A. 21-3705.

A prisoner whether confined in the county jail or a state institution has a right to medical care [*Edwards v. Duncan*, 355 F.2d 993 (1966)], and a denial of such care may constitute a denial of rights guaranteed by the 14th Amendment. In

Mr. Robert G. Frey  
Page Two  
October 5, 1977

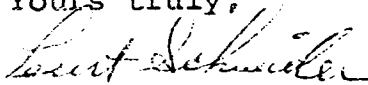
*Pfannenstiel v. Doerfler*, 152 Kan. 479 (1940), the court held that failure or refusal of a sheriff or other officer having custody of a prisoner to provide or make effort to provide medical attention which is plainly and urgently needed constitutes failure to discharge faithfully and "with humanity the duties imposed upon him."

In *City of Tulsa v. Sisler*, 285 P.2d 422, 423 (1955), the 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 necessary medical care."  
[Emphasis supplied.]

In the factual circumstances you present, we are of the opinion that the county is not liable for the medical costs incurred by Mr. Medina because during the period of time the medical services were rendered he was not under arrest nor was he in the custody of the Haskell County Sheriff.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:BEW:jj