STATE OF KANSAS

Office of the Attorney General

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Attorney General

October 10, 1977

ATTORNEY GENERAL OPINION NO. 77- 331

Mr. Lester Koch
Chief of Security
Southeastern Kansas Regional
Correctional Center
Fort Scott, Kansas 66701

Re: Counties--Jails--Medical Expenses--Liability For Injury, Escape

Synopsis: The cost of medical treatment provided a prisoner committed to an adjacent county's jail is born by the committing county.

The county would not be liable for any personal injury to an inmate. County officials charged with administration of the jail or supervision of inmates would not be liable for injury to an inmate caused by their negligence unless their conduct evidences malice or bad faith, or if it is the result of negligent failure to perform an affirmative duty imposed by law.

An inmate committed to a county jail on a misdemeanor conviction may not be charged with aggravated escape under K.S.A. 75-5269, 21-3810 for failing to return under a work release program, but may be only charged with escape under K.S.A. 21-3809.

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Dear Mr. Koch:

We are in receipt of your letter of September 7, 1977, requesting an opinion of this office regarding the following questions:

1. Who is liable for the medical expenses in case an inmate is injured or becomes ill while in our facility, who has been sent here to serve a misdemeanor sentence by the District Judge from another county?

2. Who is liable if an inmate is hurt while out of our facility on a work release program, that has been sent here by the District Judge from another county?

3. If an inmate serving time in our facility on a misdemeanor, is out on a work release program, and leaves, can he be charged with felony escape by Bourbon County?

K.S.A. 19-1901 provides:

> "There shall be established and kept at every county seat by authority of the board of county commissioners, at the expense of the county, a jail for the safekeeping of prisoners lawfully committed."

K.S.A. 19-1901 provides in part:

> "All prisoners shall be treated with humanity and in a manner calculated to promote their reformation . . . "

These sections, as well as the common law, impose on the county and the sheriff, who is entrusted with the safekeeping of prisoners (K.S.A. 19-1903), the legal duty of maintaining an adequate and sanitary facility sufficient to the safe accommodation and health of prisoners. Norton v. Sims, 85 Kan. 822, 824, 118 P. 1071 (1911). This charge has been held to include providing food and board, Pacific Coal Co. vs. Silver Bon County, 79 Mont. 323, 256 P. 386, supplying clean and sufficient bedding, Smith v. Slack, 125 W.Va. 812, 26 S.E. 387, and providing adequate medical attention which is plainly and urgently needed. Pfannenstiel v. Doerfler, 152 Kan. 479 (1940). All such proper expenses would accrue to the county having custody of inmates lawfully there committed.

However, K.S.A. 19-1916 provides that in any county in which there is an insufficient jail, the committing magistrate or judge may order a prisoner committed

> " . . . to the jail of the county nearest having a sufficient jail; and the sheriff of such nearest county shall . . . receive and keep in custody in the jail of his county the prisoner ordered to be committed as aforesaid, at the expense of the county from which such person was sent . . . "

To summarize, those charged with the administration of a jail have a duty to treat prisoners humanely. This includes providing reasonable medical attention to ailing prisoners. Generally, the county wherein the prisoner is lawfully incarcerated is responsible for all such proper expenses, but under K.S.A. 19-1916, a county committing a prisoner to another county's jail because its own facilities are inadequate is responsible for the expenses of custody, among which are providing needed medical attention. In our opinion, an arrangement whereby a number of surrounding counties agree to utilize a central detention facility in one county, would call for the application of K.S.A. 19-1916 and, by force of the statute, liability for all expenses associated with custody would be attributed to the committing county.

Your second question relates to an assessment of liability for the injury of an inmate while working on a work release program from the county jail. The doctrine of sovereign immunity would hold safe the county from any liability. Kerbert v. Wilson County Comm'rs., 134 Kan. 401, 5 P.2d 1085 (1931). This doctrine would apply to the county having custody of the inmate as well as to the committing county. As to any personal liability of county officers or prison officials, such officials are generally not liable for any injuries resulting to inmates from their negligence unless there is malice or bad faith, Bekaty v. Berglund, 179 Kan. 269, 265, 294 P.2d 228 (1956), or unless the injury results from nonperformance or negligent performance of affirmative duties imposed by law regarding prisoner welfare. Smith v. Slack, 125 W.Va. 812, 23 S.E.2d 387.

Thus, unless it can be shown that prison officials acted with malice or bad faith, or that they failed in performing an affirmative duty obliged by law, there is no personal liability for injury to an inmate. In no event would there be any liability for the county for such injury.

Lastly you ask whether an inmate who is committed on a misdemeanor conviction and who is released on a work release program and fails to return may be charged with aggravated escape, a class E felony. In my judgment, such an escape will not support that charge.

K.S.A. 21-3105 defines a felony as a crime punishable by death or imprisonment in a state penal institution, while misdemeanor offenses under K.S.A. 21-4502 are punishable by confinement in the county jail. K.S.A. 21-3809 provides that escape, meaning departure without lawful authority, from custody on a misdemeanor charge or conviction is class A misdemeanor. K.S.A. 21-3810 defines aggravated escape as "escape" from custody on felony charge or conviction, or "escape" from any charge or conviction effectuated by violence or threat of violence.

A separate provision under Chapter 75, Article 52 which deals with the establishment and powers of the State Department of Corrections, (K.S.A. 75-5269), provides that any willful failure of an inmate to remain, or return within the time prescribed, to an institution or facility designated by the secretary of corrections shall be deemed aggravated escape under K.S.A. 21-3810. This provision relates to prisoners under the custody of the Secretary of Corrections. Under Kansas statutes, only convicted felons are remanded to the custody of the secretary. Therefore, one sentenced on a misdemeanor charge who escapes on a work release program from a county jail without violence or the threat thereof, can only be charged under K.S.A. 21-3809. However, should the Southeastern Kansas Regional Correctional Center, as contemplated, enter into an arrangement with the state, whereby convicted felons remanded to the custody of the Secretary of Corrections may be incarcerated under certain conditions in your regional facility, such prisoner would be subject to K.S.A. 75-5269 and their failure to return from a work release program would constitute aggravated escape under K.S.A. 21-3810.

Yours truly,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

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