



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 90- 96

Julie McKenna
Saline County Attorney
City-County Government Building
300 W. Ash, Room 313
Salina, Kansas 67401-2396

Re: State Departments; Public Officers and Employees --
Department of Corrections; Department of
Corrections; Secretary -- Transfer of Offender to
the Topeka Correctional Facility-East

Synopsis: When a felon has been committed to the custody of
the secretary of corrections, the clerk of the
committing court is required to so notify the
secretary within three days of the commitment
order. The secretary is then required to notify
the sheriff within three days of receipt of the
clerk's notice to transport the prisoner. If the
secretary does not so notify the sheriff within
this statutory time frame, the financial
responsibility for maintaining the prisoner in the
county jail until the sheriff is notified to
transport the prisoner rests with the secretary of
corrections. Cited herein: K.S.A. 19-1910;
19-1916; 19-1917; 19-1930, as amended by L. 1990,
ch. 66, § 25; 21-4609; 21-4621; 75-5218, as
amended by L. 1990, ch. 309, § 51; 75-5220, as
amended by L. 1990, ch. 309, § 52.

* * *

Dear Ms. McKenna:

As Saline County Attorney you request our opinion regarding the financial responsibility for felons remanded to the custody of the secretary of corrections. Specifically, you ask whether the county or the department of corrections is responsible for costs incurred for housing, feeding and medical care when the department of corrections is delayed beyond the statutory time frame in taking actual custody of a prisoner.

One of the authorized dispositions available to a sentencing court is to commit a felon to the custody of the secretary of corrections. K.S.A. 21-4609. When that occurs, the court is then required to issue an order of commitment causing the transfer of custody of the defendant over to the secretary. K.S.A. 21-4621.

K.S.A. 75-5218, as amended by L. 1990, ch. 309, § 51 provides:

"(a) When any person is sentenced to the custody of the secretary of corrections pursuant to the provisions of K.S.A. 21-4609 and amendments thereto, the clerk of the court which imposed such sentence shall within three days following the order of commitment to the secretary notify the secretary of corrections."

K.S.A. 75-5220, as amended by L. 1990, ch. 309, § 52 then provides:

"(a) Within three days of the receipt of the notice provided for in K.S.A. 75-5218 and amendments thereto, the secretary of corrections shall notify the sheriff having such offender in custody to convey such offender immediately to the Topeka correctional facility-east or if space is not available at such facility, then to some other state correctional institution until space at the facility is available. . . ." (Emphasis added).

Clearly, the secretary of corrections is required by law to cause the physical transfer of an offender to the secretary's

custody within three days of receipt of notice that such person has been committed to the secretary by the court. You raise the question of responsibility for the costs of housing an offender when delays by the secretary result in the offender remaining in the physical custody of the local sheriff beyond those three days. Unfortunately, neither Kansas statutes nor Kansas case law address this issue.

Various statutes do address the costs of holding certain offenders in other situations, e.g. K.S.A. 19-1930, as amended by L. 1990, ch. 66, § 25 (cost of maintaining federal prisoners in county jail responsibility of federal government; cost of maintaining city prisoners responsibility of city); K.S.A. 19-1917 (cost for support and custody of fugitive from another state responsibility of that state); K.S.A. 19-1916 (cost for one county holding prisoner from another county due to insufficient jail space responsibility of sending county); K.S.A. 19-1910 (cost for maintaining parole violator responsibility of department of corrections). Each of these statutes places the financial responsibility for housing prisoners on the entity for whom the prisoner is being held.

Regarding prisoners committed to the secretary of corrections, the statutory scheme contemplates removal of such a prisoner from local confinement to the department of corrections no later than three days after the secretary's receipt of notice. Presumably the statute is silent regarding the cost of housing such a prisoner beyond this three day time frame because of the mandatory requirement that the secretary take physical custody of such a prisoner within that time frame. When delays by the secretary cause a breakdown of the contemplated statutory scheme and a prisoner is not removed in a timely manner to the secretary's physical custody, the question of financial responsibility for housing such a prisoner arises.

Guidance may be gleaned from the statutes which clearly place the costs for maintaining prisoners on the entity on whose behalf the prisoner is held. Following this rationale, the department of corrections would be responsible for the costs involved in maintaining a prisoner who lingered in a county jail longer than the statutory time requirement placed on the secretary of corrections allows.

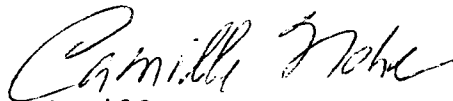
It is our opinion that if the secretary of corrections does not notify the sheriff to transport a prisoner within the statutorily required three day time frame, the financial

burden of continued maintenance of a prisoner in a county jail is the responsibility of the secretary of corrections and not that of the county.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Camille Nohe
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