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ATTORNEY GENERAL OPINION NO. 92- 145

Patrik W. Neustrom
Saline County Counselor
300 W. Ash
Salina, Kansas 67401

Re: Minors -- Kansas Juvenile Offenders Code; Detention
in Jail -- Prohibition; Expense of Care and Custody
of Juvenile

Synopsis: It is the adjudicating county's responsibility for
the detention of juveniles. A sheriff's office may
operate a juvenile detention facility for the
county. If a county will not be detaining
juveniles in 1993, then they would not be required
to meet the requirements set out in K.S.A. 1991
Supp. 38-1691(e). However, if the county plans
or expects to detain a juvenile in 1993 and does
not have in place a permanent plan for housing
juveniles, then the county must meet the
requirements of K.S.A. 1991 Supp. 38-1691(b)(4)
and (e). While a county is not statutorily
required to establish an attendant care program in
addition to the county run detention center, this
may be desirable so as to prevent overcrowding. A
county which operates a detention facility that is
not recognized by SRS would not be eligible for
construction funding through SRS, but may still
apply for federal funding pursuant to 42 U.S.C. §
5633.

Counties utilizing the provisions of K.S.A. 1991
Supp. 38-1691 are required to establish a
community committee to implement their plan
pursuant to K.S.A. 1991 Supp. 38-1691(e)(1)(D).

Cited herein: K.S.A. 1991 Supp. 38-1616;
38-1691; K.S.A. 65-501; 42 U.S.C. § 5633.

* * *

Dear Mr. Neustrom:

As Saline county counselor, you have requested our opinion on the following questions regarding juvenile detention in Saline county. We address your questions in the order they were asked.

1. Can a sheriff's office run a detention facility? If not, who is fiscally responsible for juvenile detention?

We see no specific provision that mandates that a certain entity of the county run a detention facility, or a provision prohibiting the sheriff from performing such function. Therefore, we believe a sheriff's office could operate a detention facility.

The fiscal responsibility for the detention facility is primarily that of the county. K.S.A. 1991 Supp. 38-1616(a)(1) provides that:

"If a juvenile [is] alleged or adjudged to be a juvenile offender . . . expenses for care and custody of a juvenile shall be paid out of the general fund of the county in which the proceeding is brought."

Therefore, whether through the sheriff's office or another county agency, it is the adjudicating county's responsibility for the detention of juveniles.

2. If Saline county already has removal of juvenile offenders from jail, what is required of the county on/by the December deadline?

If a county will not be detaining juveniles in 1993, then they would not be required to meet the requirements set out in K.S.A. 1991 Supp. 38-1691(e). However, if the county plans or expects to detain a juvenile in 1993 and does not have in place a permanent plan for housing juveniles, then the county must meet the requirements set forth in K.S.A. 1991 Supp. 38-1691(b)(4) and (e). These include proof of an effort to implement the juvenile offender program such as contracts or evidence of preliminary negotiations with social workers, psychiatrists, architects, and other necessary personnel. In addition, the county should have written plans of any remodeling or additions needed that will occur during 1993.

Also needed is the county's formal program and activities for the juveniles who will be held in the center. This should include the provision of the intake process.

3. Is Saline county required to start an attendant care program in addition to the county run detention center?

Although K.S.A. 38-1691 does not statutorily require Saline county to establish an attendant care program in addition to the county-run detention center, this may be desirable so as to prevent overcrowding at the regional detention center.

4. Can Saline county form its own region with another county or group of counties?

The five counties designated as regional detention center sites were selected by the advisory committee on juvenile offender programs and the secretary of the department of social and rehabilitation services (SRS). These are the only regional detention centers that will be recognized by SRS and the only ones that will receive state assistance. If Saline county desires to start a regional center not recognized by SRS, that center would not be entitled to construction funding available through SRS. The regional facility could still apply for federal funding pursuant to 42 U.S.C. § 5633.

5. Can the city (police) run an attendant care program in addition to the county run detention facility?

The city could run an attendant care program (ACP) in addition to the county run facility; the county must have a detention facility. The city and county could have a combined program provided it is functioning by January 1, 1993.

6. Are county run detention programs required to establish a community committee?

Counties are required to establish a community committee to implement their plan pursuant to K.S.A. 1991 Supp. 38-1691(e)(1)(D), in order to be exempted from the provisions of K.S.A. 1991 Supp. 38-1691 through December 31, 1992.

7. What is the statutory authority that requires the county to be fiscally responsible for juvenile detention?

Counties are fiscally responsible for the "care and custody" of alleged and adjudicated juvenile offenders pursuant to K.S.A. 1991 Supp. 38-1616(a)(1). The detention of juvenile offenders falls under the "care and custody" provision.

8. Can the county run a shelter facility attached (physically) to the detention facility of four beds or less without being licensed by SRS?

Shelter facilities are licensed by the department of health and environment (KDHE) pursuant to K.S.A. 65-501 et seq. Therefore, the county would need to deal with KDHE and SRS.

9. If the county joins a region (and pays all the required monies) and the regional center has no space available for placement of the county's juvenile(s) who is fiscally responsible?

Again, K.S.A. 1991 Supp. 38-1616 places the financial burden of the "care and custody" solely on the shoulders of the county. However, one alternative may be that counties who have joined a regional center could contractually agree to share the costs incurred when there is not space available for a juvenile offender from a participating county.

Very truly yours,



ROBERT T. STEPHAN
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