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COPY

FILE NO. S-887

COUNTIES:
Liability of County for
Hospitalization Expenses of
Parolee Injured by City Police-
men While Being Arrested for
Commission of a New Offense

Honorable Martin Rudman
State's Attorney, Will County
Courthouse
Joliet, Illinois 60431

Dear Mr. Rudman:

I have before me your recent letter wherein you stated in part:

"I respectfully request your opinion on the following issue:

Is a County liable for the payment of hospital bills for the treatment of a prisoner wounded by City Policemen in the course of his apprehension when the arrest of the wounded person is without an arrest warrant and the wounded person

> at the time of his arrest for a new offense is on parole from the Illinois Department of Corrections?
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> * * *
>
> [I]n the case of a parole situation, Chapter 38, Section 1003-14-2 (a), provides that the Department of Corrections retains custody of persons placed on parole. People ex rel. Jefferson v. Brantley, 44 Ill. 2d 31, 253 N.E. 2d 378 (1969) held (prior to the adoption of the Code of Corrections) that until final discharge, a prisoner during parole was to be considered in the legal custody of the officers of the Department of Public Safety. Chapter 38, Section 1003-7-2 (c), the Department of Corrections has a duty to provide committed persons with medical care but it should be noted that there is a serious question as to whether a person who is in parole status is a committed person.
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> * * * Apparently the prisoner is technically within the custody of the Sheriff and statutorily at all times while on parole still in the custody of the Department of Corrections. Therefore, I seek your counsel on whether you believe that the Department of Corrections is responsible for the medical bill as opposed to the County of Will."

In my opinion the answer to your question must be that the county is, and the Department of Corrections is not, liable for payment of medical and hospital expenses for care and treatment of a parolee wounded during the course of his arrest by city policemen for a new offense. My opinion is based on your

statement that "... Apparently the prisoner is technically within the custody of the Sheriff...". While it is true that the Department of Corrections under section 3-14-2 of the Unified Code of Corrections (Ill. Rev. Stat. 1973, ch. 38, par. 1003-14-2) retains constructive custody of parolees, (Jefferson v. Brantley, supra) the Illinois Supreme Court held in People ex rel. Scott v. Jones, 44 Ill. 2d 343, that the assumption of control and custody over a parolee by county authorities grants those authorities a prior right of jurisdiction over parolees arrested for commission of new offenses. In Jones, the Supreme Court upheld the suspension by the Cook County Circuit Court of a warden's warrant issued upon a parolee arrested for commission of a new offense. The court found a duty on the part of the county court to maintain jurisdiction in order to decree complete and final judgment, stating:

> "Theo was but in the constructive custody of the Department of Public Safety and he came into the physical custody and control of the authorities of Cook County when arrested for armed robbery. By assuming physical custody and control of Theo the Cook County authorities assumed jurisdiction over him and thereafter were entitled to a prior right of jurisdiction over him. (See United States ex rel.

> Brewer v. Maroney (3rd cir. 1963), 315 F. 2d 687; United States ex rel. Spellman v. Murphy, (7th cir. 1954), 217 F. 2d 247; In re Patterson, 1964 Cal. 2d, 357, 411 P. 2d 897; People ex rel. Mello v. McDonnell, 120 N.Y.S. 2d 97, aff'd 121 N.Y.S. 2d 8.) We do not, however, mean to suggest, absent circumstances which could command otherwise, as here, that the State authorities would have been prevented from taking physical custody of Theo while he was on bond. They would have had the authority to take physical custody of him but would have been required to have surrendered him for the completion of prosecution by the Cook County authorities should they have requested the State to do so. (Cf. United States ex rel. Paosela v. Fenno, (2d cir. 1948), 167 F. 2d 593, 595.)" (44 Ill. 2d 343 at 347.)

It is my opinion, therefore, that where a county retains custody of a parolee that the corresponding exercise of prior jurisdiction over his person while in custody rests responsibility for payment of hospitalization expenses upon the county rather than upon the Department of Corrections. A subsequent transfer of custody by the county to the Department of Corrections, would however, also transfer responsibility for payment of hospitalization expenses to the Department.

As to the argument that section 3-7-2(c) of the Unified Code of Corrections (Ill. Rev. Stat. 1973, ch. 38, par. 1003-7-2 (c)), which states:

> "(c) All institutions and facilities of the Department shall provide every committed person with a wholesome and nutritional diet at regularly scheduled hours, drinking water, clothing adequate for the season, bedding, soap and towels and medical and dental care."

requires that the Department of Corrections provide parolees in the custody of county officials with medical care: as a practical matter, it has never been maintained or been the practice, that parolees are entitled to regular meals, drinking water, dental or medical care from department facilities. While the definition of "committed person" as "a person committed to the department" which is provided by section 3-1-2(c) of the Code (Ill. Rev. Stat. 1973, ch. 38, par. 1003-1-2(c)) standing alone is somewhat vague, it should be noted that the case cited to in the Council Commentary to the "facilities" article, in relation to medical care, (Holt v. Sarver, 442 Fed. 2d 304, 8th Cir. 1971) was decided upon the basis of Eighth Amendment, "cruel and unusual punishment" analysis, and pertained only to prison inmates. The United States Court of Appeals in Holt, in granting a declaratory judgment to inmates of the Cummins Prison Farm Unit in Arkansas that prison practices violated their Eighth Amendment rights adopted District Court Judge Henley's conclusion that:

> "The Court, however, is limited in its inquiry to the question of whether or not the constitutional rights of inmates are being invaded, and with whether the Penitentiary itself is unconstitutional. The Court is not judicially concerned with questions which in the last analysis are addressed to legislative and administrative judgment. A practice that may be bad from the standpoint of penology may not necessarily be forbidden by the Constitution. And a prison system that would be excellent from the view point of a modern prison administrator may not be required by the provisions of the Constitution with which the Court is concerned." (Emphasis added.) (309 F. Supp. 362, 369.)

The above cited materials support the conclusion that the intent of the General Assembly in promulgating section 3-7-2 of the Code (Ill. Rev. Stat. 1973, ch. 38, 1003-7-2) was merely to establish constitutionally acceptable standards to regulate treatment of prison inmates. This conclusion draws support from that language of the section which specifically refers to cells, access to weekly baths, receipt of uncensored mail and visits by clergy. It is clear that the intent of the General Assembly in promulgating specific regulations was to guarantee the quality of institutional living conditions and daily activities to establish minimum standards of care to be provided for inmates of correctional institutions in Illinois. To adopt a construction

defining parolees as "committed persons" within the terms of the statute would, therefore, violate the cardinal rule of statutory construction that statutes are to be construed so as to ascertain the intent of the legislature. People ex rel. Kucharski v. Adams, 48 Ill. 2d 32; Lincoln National Life Insurance Co. v. McCarthy, 10 Ill. 2d 489.

Finally, to adopt the classification of parolees as "committed persons" under section 3-7-2 of the Code (Ill. Rev. Stat. 1973, ch. 38, par. 1003-7-2), which your letter suggests would open the door to mischievous determinations of liability of the State of Illinois for medical expenses of parolees injured during the course of their apprehension for commission of new offenses in other states. Such a classification would place a severe burden upon the taxpayers of Illinois requiring them to finance operation of jail facilities in other states. In fact, such a strict and mischievous burden has never been judicially imposed. State and Federal courts have both recognized the inter-relationship between custody and physical control of parolees in permitting the sovereign with physical possession the absolute right to assume jurisdiction notwithstanding

the fact that the petitioner is subject to a prior probation or parole of another sovereign. U.S. v. Maroney, supra; In Re Patterson, 411 P. 2d 897 Cal. (1966).

I, therefore, have reached the conclusion, that the responsibility for payment of the hospitalization expenses of the parolee injured during the course of his arrest by city policemen lies with the County of Will as opposed to the Department of Corrections. This responsibility results from both the common law and express statutory provisions requiring counties to render support, both financial and otherwise to sheriffs, in maintenance of county jails. (33 I.L.P. 489, Sheriffs and Constables.) In the absence of additional specific information I am unable to render an opinion as to any potential relevance of the fact that the arrest in question occurred without a warrant to the question of liability for hospitalization expenses.

Very truly yours,

A T T O R N E Y G E N E R A L