

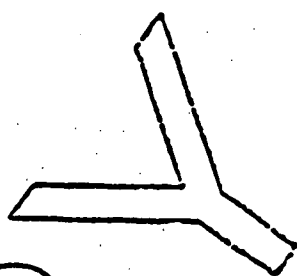


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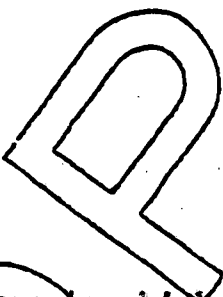
December 15, 1981

FILE NO. 81-040

COUNTIES:  
Recovery of Expenses of  
Maintaining Prisoners  
Confined to County Jails



Honorable John A. Barra  
State's Attorney  
Peoria County Courthouse  
Peoria, Illinois 61602



Dear Mr. Barra:

I have your letter in which you request my opinion regarding the following questions:

1. May the expense incurred for feeding a prisoner incarcerated in a county jail pending trial upon a criminal charge be assessed as part of the costs of prosecution as provided in section 13 of "AN ACT to revise the law in relation to criminal jurisprudence" (Ill. Rev. Stat. 1979, ch. 38, par. 130-3)?
2. If such expenses may not properly be assessed as costs of prosecution upon conviction, is the county authorized to recover the value of such expenses by civil proceedings?

For the reasons hereinafter stated, it is my opinion that the expense incurred in feeding prisoners confined to a county jail while such prisoners are awaiting trial rests with

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the county, and such expense may neither be taxed as costs of prosecution to a defendant who is subsequently convicted nor, in general, recovered through a civil action.

Section 2 of "AN ACT to revise the law in relation to jails and jailers" [Jails and Jailers Act] (Ill. Rev. Stat. 1979, ch. 75, par. 2) requires the sheriff of each county of the first or second class to act as warden of the county jail. Section 16 of the Jails and Jailers Act (Ill. Rev. Stat. 1979, ch. 75, par. 16) provides, in pertinent part:

"The warden of the jail shall furnish each prisoner daily with as much clean water as may be necessary for drink and personal cleanliness, and serve him three times a day with wholesome food, well cooked and in sufficient quantity. On and after the first Monday in December, 1918, the warden of the jail in counties of the first and second class shall procure at the expense of the county, all necessary foods and provisions for the support of the prisoners confined in the jail, and when authorized by the county board so to do may employ at the expense of the county a suitable person or persons to prepare the food for the prisoners and to serve the same.

The said superintendent of the jail shall from time to time consult with the county board as to the quantity, kinds and quality of foods and provisions necessary and proper to be procured. All bills for such food and provisions, and for the preparation and service of the same, shall be audited and allowed by the county board and paid from the county treasury. \* \* \* (Emphasis added.)

Section 24 of the Jails and Jailers Act (Ill. Rev. Stat. 1979, ch. 75, par. 24) provides:

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"The cost and expense of keeping, maintaining and furnishing the jail of each county, and of keeping and maintaining the prisoners thereof, except as otherwise provided by law, shall be paid from the county treasury, the account therefor being first settled and allowed by the county board."

In counties of the third class, the duties prescribed in the Jails and Jailers Act are performed by the County Department of Corrections under the supervision of the sheriff, as provided in the County Department of Corrections Act (Ill. Rev. Stat. 1979, ch. 125, par. 201 et seq.). Section 15 of the County Department of Corrections Act (Ill. Rev. Stat. 1979, ch. 125, par. 215) requires the county board to appropriate funds for the necessary expenses of the office of the sheriff in performing its duties pursuant to the Act.

The word "shall", when used in a statute prescribing the performance of an act by a public official or a public body which may affect an individual's rights, must be given a mandatory meaning. (Andrews v. Foxworthy (1973), 71 Ill. 2d 13, 21.) That the duty of the warden of a county jail to provide food to prisoners confined therein is mandatory is confirmed by reference to section 23 of the Jails and Jailers Act (Ill. Rev. Stat. 1979, ch. 75, par. 23), which provides penalties for the failure to comply with the requirements of section 16 of that Act.

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When the language of sections 16 and 24 of the Jails and Jailers Act is construed to give effect to the imperative "shall", it is clear that a duty to feed prisoners confined in the county jail is imposed on the sheriff, and a duty to pay the cost thereof is imposed on the county board. The liability of the county for the expense of feeding prisoners confined to its jail continues even when such a prisoner is transferred or committed to a jail in a county other than that in which the prisoner's criminal conduct was committed or is alleged to have been committed. (Ill. Rev. Stat. 1979, ch. 75, par. 25.)

The assessment of costs in criminal proceedings is required by section 13 of "AN ACT to revise the law in relation to criminal jurisprudence", which provides:

"When any person is convicted of an offense under any statute, or at common law, the court shall give judgment that the offender pay the costs of the prosecution."

Section 25 of "AN ACT to revise the law in relation to costs" (Ill. Rev. Stat. 1979, ch. 33, par. 25) provides:

"The clerk of any court in this state is hereby authorized and required to tax and subscribe all bills of costs arising in any cause or proceeding instituted in which he is clerk, agreeably to the rates which shall, for the time being, be allowed or specified by law; and shall in no case allow any item or charge unless he shall be satisfied that the service for which it was made was actually performed in the cause."

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Section 16 of "AN ACT to revise the law in relation to clerks of courts" (Ill. Rev. Stat. 1979, ch. 25, par. 16) provides in pertinent part:

" \* \* \*

Unless otherwise provided by rule or administrative order of the Supreme Court, the respective clerks of the circuit courts shall keep in their offices the following books, to wit:

\* \* \*

Fifth--A fee book, in which shall be distinctly set down, in items, the proper title of the cause and heads, the cost of each suit, including clerk's, sheriff's and witness' fees, \* \* \* .

\* \* \*

"

The assessment and imposition of costs pursuant to section 13 of "AN ACT to revise the law in relation to criminal jurisprudence" is a mandatory duty, which may not be waived as an exercise of judicial discretion. (People v. Keagbine (1979), 77 Ill. App. 3d 1039, 1047, cert. denied (1980), 101 S.Ct. 354.) The allowance and recovery of costs rests entirely upon the existence of statutes authorizing allowance; the assessment of costs not authorized by statute is an abuse of discretion. (People v. Kluck (1979), 79 Ill. App. 3d 562, 584.) No statute specifically authorizes expenses incurred in feeding and maintaining prisoners incarcerated pending trial to be taxed as costs of prosecution.

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Furthermore, although statutory sheriff's fees are among the costs which are required to be assessed pursuant to section 13 of "AN ACT to revise the law in relation to criminal jurisprudence" (People v. Hanei (1980), 81 Ill. App. 3d 690, 707-08, cert. denied (1981), 101 S.Ct. 1382), the expense of feeding prisoners confined in the county jail cannot be considered a fee of his office. Section 19 of "AN ACT concerning fees and salaries, and to classify the several counties of this state with reference thereto" (Ill. Rev. Stat. 1979, ch. 53, par. 37) provides, in pertinent part:

"The fees of sheriffs in counties of the first and second class shall be as follows:

\* \* \*

For feeding each prisoner, such compensation to cover the actual cost as may be fixed by the county board, but such compensation shall not be considered a part of the fees of the office.

\* \* \*

(Emphasis added.)

A virtually identical provision applies to the fees of sheriffs of counties of the third class. (Ill. Rev. Stat. 1980 Supp., ch. 53, par. 71.)

An unambiguous statute must be construed to mean what it plainly expresses. (Droste v. Kerner (1966), 34 Ill. 2d 495, 503, cert. denied (1966), 385 U.S. 456.) By the plain and unambiguous terms of the provisions cited above, reimbursement of the sheriff to cover the expense of feeding prisoners

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confined to the county jail is not a fee of his office. The statute gives the county board the right to fix the cost of feeding prisoners, at a rate not less than the actual cost, as a matter of protection to the county. County of Cook v. Gilbert (1893), 146 Ill. 268, 273.

Therefore, in the absence of a statute authorizing such expenses to be taxed as costs, it is my opinion that there is no power to do so pursuant to section 13 of "AN ACT to revise the law in relation to criminal jurisprudence", or pursuant to any other statutory provision.

In response to your second question, the settled rule of law is that the expense of keeping a prisoner in a jail or prison may not be recovered from the prisoner or his estate unless a statute specifically permits recovery. (In re Gardner (Sup. Ct. Wis. 1936), 264 N.W. 647, 648; In re Sprain's Guardianship (Sup. Ct. Wis. 1935), 263 N.W. 648, 649; 72 C.J.S. Prisons § 26 (1951).) In Illinois, recovery of certain expenses, such as the cost of hospital services, is authorized by statute. (See, e.g., Ill. Rev. Stat. 1980 Supp., ch. 38, par. 1205; ch. 75, par. 19.) Recent legislation will expand the authority of counties to recover from a convicted prisoner the expenses of feeding and maintaining him.

House Bill 542, enacted as Public Act 82-717 (effective July 1, 1982), amends, inter alia, sections 24 and 25 of the Jails and Jailers Act to permit county boards to

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require a prisoner to reimburse the county for expenses incurred by his incarceration, and to enforce this requirement by means of a civil action against the prisoner. Public Act 82-717 adds the following language to section 24 of the Jails and Jailers Act:

"

\* \* \*

The county board may require convicted persons confined in its jail to reimburse the county for the expenses incurred by their incarceration to the extent of their ability to pay for such expenses. The State's Attorney of the county in which such jail is located may, if requested by the County Board, institute civil actions in the circuit court of the county in which the jail is located to recover from such convicted confined persons the expenses incurred by their confinement. Such funds recovered shall be paid into the county treasury." (Emphasis added.)

This amendment, by its own terms, applies only to "convicted persons" who are confined in a county jail. The word "convicted" was inserted in several amendatory clauses contained in House Bill 542 by House Amendment No. 1. In explaining the purpose of House Amendment No. 1, Representative J. J. Wolf, co-sponsor of the bill, stated from the floor:

"Amendment #1 is being introduced at the request of Members of the Committee. It \* \* \* puts the word 'convicted' in [the provision] \* \* \* to make certain that a person incarcerated awaiting trial would not be subject to the provisions of this Bill.  
\* \* \*

It is clear from both the language of House Bill 542 and the commentary contained in the debates pertaining to its passage, that the authority of a county board to require reimbursement



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of the expenses of incarceration from a prisoner extends only to persons convicted of an offense and confined following conviction. As to persons incarcerated pending trial, it is my opinion that no statute authorizes a county to recover expenses of confinement from the prisoner, and therefore no recovery may be effected.

This conclusion would not prohibit a county board from recovering the expenses of confinement in cases where the defendant is subsequently convicted and sentenced to a term of incarceration in the county jail, with credit given against his sentence for time served in custody while awaiting trial, as provided in sections 5-4-1 and 5-8-7 of the Unified Code of Corrections (Ill. Rev. Stat. 1979, ch. 38, pars. 1005-4-1, 1005-8-7). Under such circumstances, time served in custody pending trial becomes equivalent to a sentence of incarceration for which expenses could be recovered under the terms of section 24 of the Jails and Jailers Act as amended by Public Act 92-717. In these circumstances, recovery of expenses by the county would appear to be authorized.

To reiterate, it is my opinion that the expenses incurred in feeding a prisoner confined to a county jail pending trial may not be taxed as costs of prosecution to the defendant upon conviction. Except in the specific circumstances

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set forth herein, a county has no power to recover such expenses from a prisoner by civil action.

Very truly yours,

ATTORNEY GENERAL