

N.D.A.G. Letter to Baer (Sep. 11, 1985)

September 11, 1985

Mr. Larry M. Baer
Towner County State's Attorney
P. O. Box 685
Cando, North Dakota 58324

Dear Mr. Baer:

Thank you for your letter dated August 30, 1985.

You have inquired as to whether or not the State of North Dakota is responsible for the expenses incurred by Towner County as a result of the shooting of a North Dakota Highway Patrolman this past summer. You state that the person charged with such shooting has incurred substantial medical costs and Towner County has had to pay for the presence of a guard for the defendant at the hospital and clinic as the defendant remains in the custody of Towner County authorities.

N.D.C.C. § 27-01-01.1 was adopted by the North Dakota Legislature in 1981. This statute provides for the assumption, by the state, of the payment of salary and expenses of the district courts. A comprehensive budget for the Supreme Court and the district courts was submitted to the Legislature for an appropriation to pay the salary and expenses of such courts. This statute was a part of a bill for the comprehensive reorganization of the county courts introduced in the 1981 Legislature as House Bill 1060. It is my understanding that the combining of the Supreme Court and district court budgets within a state legislative appropriation was the result of concerns of county officials pertaining to the payment of indigent defense costs. Immediately prior to the passage of this bill, Adams County, North Dakota, had expended substantial indigent defense costs in a murder case which imposed an onerous burden upon that county.

I have examined the legislative history of House Bill 1060 and cannot find any legislative intent that all costs pertaining to felony prosecutions be borne by the State of North Dakota including those pertaining to medical care of prisoners while in county custody nor the cost of a guard for that prisoner. The money which has been appropriated under N.D.C.C. § 27-01-01.1 has been directed to the payment of district court and juvenile court personnel salaries and expenses, exclusive of the clerk of district court, the court reporter's salary and expenses, administrative staff, court-appointed masters, maintenance of law libraries, juror and bailiff expenses, indigent defense expenses, and the purchase of equipment or supplies necessary for operation of such courts. No specific funds have been appropriated for payment of confinement expenses incurred by a county for persons charged with a felony offense.

The North Dakota Supreme Court issued Policy 204R on July 1, 1983, pertaining to the payment of costs in felony cases. I have included a copy of this policy with this letter. Such policy permits the payment of indigent defense costs and witness fees in felony cases. Although this policy was effective through June 30, 1985, there is no indication that the North Dakota Supreme Court will depart from this policy in the future.

During the 1985 legislative session, Senate Bill 2396 was introduced to amend N.D.C.C. § 27-01-01.1 and to create a new section of the North Dakota Century Code requiring the state to reimburse a county for costs of confinement after a defendant has been bound over to district court and until sentencing. This bill was not passed. The defeat of this bill is evidence of legislative intent that N.D.C.C. §2701-01.1 does not authorize the payment of costs of confinement in felony cases, including the costs for medical care.

The responsibility for confinement costs of persons charged with a felony offense rests with the county. N.D.C.C. § 1110-20 requires the board of county commissioners to provide a jail. In addition, N.D.C.C. §12-44.1-02(1) requires a county to establish and maintain a jail at county expense or to contract with other counties or cities for jail services or the establishment of a regional correction center. N.D.C.C. §12-44.1-01(2) defines "county jail" as "a confinement facility established and maintained by a county." It is clear that the cost and maintenance of a county jail is the responsibility of a county and not the state.

N.D.C.C. §12-44.1-14(6) requires that the governing body of each jail insure that inmates have adequate medical care. This is a necessary expense of the maintenance of the jail and custody of the prisoner.

You have also indicated in your letter that you consider it unfair that the county bear the cost of extraordinary felony criminal activity. I sympathize with this argument and believe it has merit. But this is a matter which should be presented to the North Dakota Legislature for its consideration in amending N.D.C.C. § 27-01-01.1 or the adoption of a new statute to permit the payment of confinement costs of persons charged with a felony from a state appropriation.

The duty of a county to establish and maintain a county jail, to provide for jail services, and to insure adequate care of the prisoners within its custody is not dependent upon whether or not the person has been charged with a felony or misdemeanor. The Ohio Court of Appeals in Cuyahoga County Hospital v. City of Cleveland, 472 N.E.2d 757 (Ohio App. 1984), was faced with a similar question as presented in your letter. The Court held that the nature of the offense is not the determining factor in placing the responsibility for the care and confinement of prisoners. The Court stated at 759:

The responsibility for the care and sustenance of a prisoner falls upon the one who exerts actual, physical dominion and control over the prisoner. When physical control is transferred, the responsibility is transferred along with it and the cost of care can be properly prorated. The care the prisoner receives is not incident to the crime, but to the custody.

Absent specific legislative action, the state cannot pay for, nor reimburse, the county for the cost of confinement and care of prisoners within its custody. Payment of such costs cannot be made under N.D.C.C. § 27-01-01.1 which provides for the Supreme Court and district court comprehensive budget process.

I trust that this letter has answered your inquiry.

Sincerely,

Nicholas J. Spaeth

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Enclosure

cc: Larry Spears Chief Justice Ralph J. Erickstad