

N.D.A.G. Letter to Neugebauer (March 19, 1987)

March 19 1987

Mr. Brian D. Neugebauer
West Fargo City Attorney
P.O. Box 458
West Fargo, ND 58078-058

Dear Mr. Neugebauer:

Thank you for your letter dated March 2, 1987. You have requested an opinion from me as to the liability of the city of West Fargo concerning the payment of medical costs of a person who was at one time arrested upon a West Fargo Municipal Court warrant.

The factual situation set forth in your letter, especially as it relates to what was known or not known by St. John's Hospital at the time of providing medical care does not permit me to provide you with an opinion concerning the liability of the city of West Fargo or any other entity or the amount of such liability for the payment of medical care of a prisoner.

Although I may provide you with an opinion concerning interpretations of laws or constitutional provisions, I believe that I would be acting as an arbitrator or a judicial officer in providing an opinion based upon the factual situation set forth in your letter. Although I may provide that type of opinion to state officials, boards, agencies, and commissions of which I am required to represent, this opinion or advice is based upon my role as counsel for those persons or entities as a part of an attorney-client relationship.

Although I cannot provide you an opinion in this matter, I have included with this letter N.D. Op. Att'y Gen. 86-14 concerning medical expenses of inmates at a correctional facility. You will note that N.D. Admin. Code § 10-05-06-02 refers to reimbursement from the inmate for payment of the medical expenses. The inmate would be ultimately responsible for these medical costs.

Preliminary research has disclosed some cases which may bear upon this issue. There appears to be two lines of cases concerning the responsibility of a city or county to pay the medical costs of an individual who has been arrested or placed in the custody of law enforcement officials. The majority rule is set forth in L. P. Medical Specialties, Ltd. v. St. Louis County, 379 N.W.2d 104 (Minn. App. 1985). This rule is known as the "nature of offense" rule. If a city ordinance is violated, the city would ordinarily be responsible for the medical expenses of the violator. If a state law is violated, the county would be responsible.

The minority rule set forth in Cuyahoga County Hospital v. City of Cleveland, 15 Ohio App.3d 70, 472 N.E.2d 757 (1984), is known as the "custody and control" rule. The entity which has physical control or custody of the detained person is responsible for the cost of

care. In addition, the court added that this cost can be prorated as control or custody is transferred.

Since each of these rules may pertain to medical care provided to a person while in continued custody, they may not have application to the instance described in your letter in which the individual is released from custody and thereafter incurs medical expenses. The South Dakota Supreme Court in Saxton v. Sanborn County, 74 N.W.2d 843 (S.D. 1956) held that a county was not responsible for the medical expenses of a person who had been temporarily released from custody and who required medical care after he had been allowed to return to his home. In Borgess Hospital v. County of Berrien, 114 Mich. App. 385, 319 N.W.2d 354 (1982), the court held that the county was not responsible for continued medical care after the defendant had been discharged from custody. Following the same rule, the court in Dade County v. Hospital Affiliates International, 378 So.2d 43 (Fla.App. 1980), the court held that if a defendant is not in custody when treated, the county would not be liable for that person's medical expenses.

In City of Plantation v. Humana, Inc., 429 So.2d 37 (Fla. App. 1983), the patient attempted suicide in jail. He was taken to a hospital selected by the ambulance attendants. The patient's mother signed the admission forms and the bill for the hospitalization was in the patient's name. Within 24 hours after the patient's admission, he was released from custody upon a personal recognizance bond. The court held that the city was not required to pay for the hospitalization absent an express or implied agreement between the city and the hospital to pay such a bill.

There may very well be additional cases which bear upon this point, but it would appear that the responsibility to pay medical expenses will be dependent upon the continued custody of the patient when the treatment was rendered. The "nature of offense" rule and "custody and control" rule will have little relevance to this issue but may bear only upon the responsibility between a city or county for a medical bill once that medical bill is found to be chargeable against a public entity.

Although I could not provide you with an opinion pursuant to your request, I hope that this information may be of help to you and the Cass County authorities in evaluating the claim made against the respective governmental units.

Sincerely,

Nicholas J. Spaeth

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Enclosure