

N.D.A.G. Letter to O'Donnell (June 24, 1987)

June 24, 1987

Ms. Mary K. O'Donnell
Rolette County State's Attorney
P. O. Box 1079
Rolla, ND 58367

Dear Ms. O'Donnell:

Thank you for your letter dated June 8, 1987.

You have inquired as to whether or not a municipality is liable for the cost of medical care provided to a prisoner incarcerated at a county jail on a warrant issued by the municipal court of a city which is located outside the county and which does not have a written contract with that county's jail.

You have related that a person held in the Rolette County jail at the request of the City of Devils Lake suffered a self-inflicted wound that required medical attention and that Rolette County does not have written contract with the City of Devils Lake pertaining to the confinement of prisoners.

It is difficult for me to directly respond to your question since resolution of this matter will depend upon the individual facts and circumstances of your case.

There is no question that the individual inmate would be responsible to the county for reimbursement of the medical expenses expended on his behalf pursuant to N.D. Admin. Code § 10-05-06-02.

However, the question of whether or not a city will be responsible for payment of such expenses in the absence of a written contract is not as clear. I have enclosed with this letter 1986 N.D. Op. Att'y Gen. 74 and other correspondence which relates to these issues. You will note in the March 19, 1987, letter to Brian Neugebauer, West Fargo city attorney, the two lines of cases concerning the responsibility of a city to pay medical costs of a prisoner.

The North Dakota Supreme Court has generally addressed this issue in Trinity Hospital Association v. City of Minot, 76 N.W.2d 916 (N.D. 1956). In this case, the court found that the city would not be held responsible for medical expenses of a prisoner who had been taken to a hospital by a police officer. It was held that the city, having assumed no obligation of pay for such medical expenses, was not liable for the act of the city police officer. The court further held that the police officer had no authority to bind the city to pay the medical expenses in the absence of a statute authorizing the police officer to contract for, or create a liability on behalf of the city for such services. The court in this case

appears to adopt the premise that only an express agreement, acceptance, or ratification on the part of the city would authorize payment for such expenses. I have enclosed a copy of this case with this letter.

Although Rolette County may have been obligated to provide the medical care to the inmate injured while in your county's custody, any resolution of this matter with the City of Devils Lake would appear to depend upon whether or not an agreement existed imposing liability for the medical care upon the city. As I have stated, because of the factual determinations which must be made in this matter, I cannot provide you a specific answer to your question.

I hope that the materials I am sending to you will be of help in resolving this matter. It may be appropriate for legislation to be introduced in the next legislative session establishing the liability for such expenses.

As you know, Rolette County will be initially responsible for insuring that the inmates under its control have needed medical care. In a situation such as yours where a warrant from a city outside of your county is executed within your county, considerable difficulties arise in determining liability for the resultant expenses. Since a city must either have a jail or contract for jail services under N.D.C.C. § 12-44.1-02, this problem would not arise in the case of cities within your county since all rights and responsibilities would be established by contract.

In this instance, however, it may be necessary to apply the case law of this and other states to determine whether or not, by requesting that a city warrant be executed, the city has, in fact, agreed to assume such expenses required in the care of the city inmate. LP Medical Specialties Ltd. v. St. Louis County, 379 N.W.2d 104 (Mn. App. 1985), may be of help in determining the extent of the city's liability. In addition, the restrictive nature of the Trinity Hospital Association v. City of Minot case may not be fully applicable to the present state of the law. In that case, statements were made that in the absence of some expressed provision of law, the public is not liable to a physician for services rendered prisoners charged with a criminal offense even if the prisoners are insolvent. This language may be somewhat at odds with the provisions of N.D.C.C. § 12-44.1-06 requiring that inmates have adequate medical care and with the holding of City of Revere v. Massachusetts General Hospital, 463 U.S. 239 (1983). In addition, you may wish to review the case of Grand Forks County v. City of Grand Forks, 123 N.W.2d 42 (1963) in which the matter of an implied contract between a city and county was presented to the supreme court.

I hope that this information will be of help to you. As I have stated, since resolution of your question involves factual determinations as to the existence of an agreement with the city of Devils Lake, I cannot provide you a formal opinion in direct response to your question.

Sincerely,

Nicholas J. Spaeth

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Enclosures