

LETTER OPINION
2001-L-11

April 2, 2001

Mr. Kenneth L. Dalsted
Jamestown City Attorney
PO Box 1727
Jamestown, ND 58402-1727

Dear Mr. Dalsted:

You ask whether a city is liable to a hospital for medical services rendered to an individual brought to the hospital by a city policeman after being placed under arrest, but prior to being placed in a correctional facility. As I understand, the individual was found by the city police in a condition believed to require medical care. The condition existed prior to any contact with the city police. The police observed evidence of a criminal offense where the individual was found and the individual was placed under arrest. The individual was taken directly to a hospital for treatment of the individual's medical condition. After medical treatment, the individual was taken to a correctional facility. The hospital has presented a bill to the city for the cost of treatment.

North Dakota law does not provide that a city is liable under the circumstances you describe. Unlike some states, North Dakota has no statutory law concerning payment of medical expenses of arrestees.¹ Thus, we must examine court cases to determine what obligation, if any, the city may have to pay for the treatment.

The United States Supreme Court addressed a similar fact situation in the City of Revere v. Massachusetts General Hospital, 463 U.S. 239 (1983). In Revere, an individual the police sought to detain at the scene of a burglary was shot and wounded when he attempted to flee. An ambulance was called and a policeman accompanied the wounded individual to the emergency room of a hospital where he was treated for several days. The Supreme Court found that "[t]he Due Process Clause . . . does require the responsible government or governmental agency to provide medical care to persons . . . who have been injured while being apprehended by the police." Id. at 244. The Court held that whatever "[the City of] Revere's due process obligation to pretrial detainees or to other

¹ See, e.g., OSF Health Care Systems v. County of Lee, 607 N.E.2d 699 (Ill. App. Ct. 1993) (holding that the city was liable for medical expenses of an arrestee and not the county under a statute imposing liability upon "the arresting authority" because the city had arrested the person and transported the person to the hospital).

persons in its care who require medical attention. . . . may be, Revere fulfilled its constitutional obligation by seeing that [the injured individual] was taken promptly to a hospital that provided the treatment necessary for his injury.” Id. at 244-45. The Court explained that “the Constitution does not dictate how the cost of that care should be allocated as between the [government] entity and the provider of the care. That is a matter of state law.” Id. at 245.

The court’s analysis clarifies the duty of law enforcement to assure medical attention for the individual, but does not state that the local government entity is responsible for the cost of such medical treatment. Rather, the case clearly indicates that the issue of payment for medical treatment is subject to state law.

As mentioned above, North Dakota state law does not address the issue. There are three North Dakota Supreme Court cases, however, dealing with the subject of cost allocation. In Trinity Hospital Association v. City of Minot 76 N.W.2d 916 (N.D. 1956), the court held that a hospital could not recover from the government entity the cost of medical care furnished to a person shot by a policeman and taken to a hospital for treatment under an implied contract theory. The holding in this case makes it clear a city has no obligation to pay a hospital for treatment of an arrestee.

Two subsequent cases from Grand Forks seem to clarify the issue. In United Hospital v. D’Annunzio, 514 N.W.2d 681 (N.D. 1994), the North Dakota Supreme Court held that under N.D.C.C. § 12-44.1-14(6) Grand Forks County was liable under an implied contract to pay for medical care provided a jail prisoner by two Grand Forks hospitals. See also Grand Forks County v. City of Grand Forks, 123 N.W.2d 42, 46-7 (N.D. 1963) (holding Grand Forks liable under an implied contract for maintaining its prisoners in the county jail). In D’Annunzio the basis of the Court’s decision was the language in chapter 12-44.1, N.D.C.C.

The scope of chapter 12-44.1 of the Century Code is limited to inmates as defined in the chapter. Paragraph 4 of section 12-44.1-01 defines “inmate” as “... any person, whether sentenced or unsentenced, who is detained or confined in a correctional facility.” The definition does not include arrestees who have not been detained in a correctional facility. Consequently, the holding in D’Annunzio cannot be expanded to cover the fact situation in question. As such, I do not find any statute or case law supporting the proposition that the City of Jamestown is liable to a hospital for medical services rendered to an individual brought to the hospital by a city policeman after being placed under arrest, but prior to being placed in a correctional facility.

LETTER OPINION 2001-L-11

April 2, 2001

Page 3

You also asked whether the cost of care should be absorbed under the Hill Burton Act or recovered from the individual treated or third-party payors. The answer to these questions is dependent upon the specific facts presented. See generally D'Annunzio at 686 and Revere at 245 regarding a discussion of payment and recovery options. The person who receives the medical care, whether an inmate or an arrestee, may be held responsible for the cost of the care either as a primary payor, or through a third-party payor such as an insurance carrier. In addition, the governing body of a jail may seek reimbursement from the inmate who received the care. United Hospital v. D'Annunzio. In addition, House Bill 1401, just approved by the Legislative Assembly, addresses the payment and reimbursement of inmate health care costs.

The final question in your letter asked whether a city is responsible for the payment of treatment costs of a patient of the State Hospital who is not an arrestee but merely transported by the city police to that treatment facility. Section 50-06.3-04, N.D.C.C., governs the responsibility and payment costs of patient care at the State Hospital. The patient, the patient's spouse, estate, or parents, if the patient is under 18 years of age, are among those persons responsible for patient care expenses. A city is not one of the listed persons or entities responsible for such payment. In addition, N.D.C.C. §50-06.3-03 specifically prevents the recovery of State Hospital expenses for the care and treatment of a patient transferred to the State Hospital from a jail or regional corrections facility.

Sincerely,

Wayne Stenehjem
Attorney General

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