

LETTER OPINION
2001-L-52

December 17, 2001

Ms. H. Jean Delaney
Barnes County Assistant State's Attorney
230 4th Street NW
Valley City, ND 58072-2947

Dear Ms. Delaney:

Thank you for your letter inquiring whether the Valley City Police Department or the Barnes County Sheriff has the responsibility to transport individuals who are subject to involuntary commitment to the North Dakota State Hospital.

The purpose of N.D.C.C. ch. 25-03.1 is to "[p]rovide prompt evaluation and treatment of persons with serious mental disorders or chemical dependency" through the "full use of all existing agencies [and] professional personnel." N.D.C.C. § 25-03.1-01. The Legislature is presumed to act with purpose and not perform useless acts. State v. Beilke, 489 N.W.2d 589, 592 (N.D. 1992); see also N.D.C.C. § 1-02-38. This office has previously concluded that when all statutes concerning emergency commitments are construed together, the legislative scheme requires that, when necessary, a sheriff or deputy or other local law enforcement officer transport individuals for evaluation and treatment. See 1996 N.D. Op. Att'y Gen. L-153 (copy enclosed).

This office has also concluded that a law enforcement officer may convey a person pursuant to an emergency commitment to any treatment facility without regard to the jurisdiction of the officer. See 1994 N.D. Op. Att'y Gen. L-78 (copy enclosed). The opinion recognized that no provision under N.D.C.C. §§ 25-03.1-25 or 25-03.1-26 suggests that conveyance is limited to a treatment facility within the traditional jurisdiction of a law enforcement officer. Section 25-03.1-25, N.D.C.C., vests the agency with additional peace officer jurisdiction to make the transport.

It is my opinion that in order to accomplish the purpose of the civil commitment statutes, either the Valley City Police Department or the Barnes County Sheriff would be required to transport an individual if an emergency commitment is made by a physician, psychiatrist, psychologist, or other mental health professional and that professional requests the assistance of the law enforcement agency. Whichever agency first receives the request is required to make the transport.

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As a policy matter, if you decide that one law enforcement agency is more appropriate than the other to provide routine transport, you could request that physicians, psychiatrists, psychologists, and other mental health professionals contact the most appropriate agency.

Absent an emergency detention, the court will designate who is responsible for transportation in a civil commitment process. Section 25-03.1-39, N.D.C.C., authorizes the court to designate an official or person to arrange for the individual's transportation to the treatment facility, and the court order vests the official or person with authority to make the transport. See Letter from Assistant Attorney General Robert Bennett to James Welder (July 1, 1987) (copy enclosed).

Sincerely,

Wayne Stenehjem
Attorney General

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Enclosures