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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

August 22, 2001

David E. Rushton, President
SC Jail Administrators' Association
3239 Louis Rich Road
Newberry, South Carolina 29108

Re: Medical Care for Pretrial Detainees

Dear Mr. Rushton:

You have requested an opinion from this Office concerning the obligation of a governmental entity to pay certain medical expenses for pre-trial detainees. You indicate that your understanding of the holding in Myrtle Beach Hosp. Inc. v. City of Myrtle Beach, 341 S.C. 1, 522 S.E.2d 868 (2000), and federal case law on the subject is that hospitals, rather than governmental entities, are responsible for the costs of "emergency medical care" for pretrial detainees. Given this understanding, you specifically ask "who is responsible for further care, after 'emergency care' of pretrial detainees has been provided?" You have cited several scenarios where follow-up treatment may be necessary and/or the detainee or service provider may be uncooperative or unwilling to provide treatment or an assurance to pay. You also ask whether a county or municipality would be "responsible for the non-emergency medical care for persons charged with a municipal court offense" when housed in a county detention center.

The Due Process Clause of the United States Constitution dictates that the governmental entity with custody of a pretrial detainee ensure that needed medical care is provided to such detainee. See City Of Revere v. Massachusetts General Hospital, 463 U.S. 239, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983). This Constitutional requirement does not mandate that the governmental entity pay for the needed treatment, rather, this type of requirement must come from state law. Id. In Myrtle Beach Hosp. Inc. v. City of Myrtle Beach, our Supreme Court held that there was no statutory, public policy or equitable obligation on the part of a governmental entity to bear medical expenses of pretrial detainees in South Carolina. As, however, stated by the United States Supreme Court in City of Revere and recognized by this Office in a previous opinion dated August 28, 1995, "[i]f, of course, the governmental entity can obtain the medical care needed for a detainee only by paying for it, then it must pay."

The requirements and principles of the above cases do not turn on the designation of the needed service as "emergency medical care." Rather, the principles are applicable whenever medical

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Request Letter

care is "needed." In Chapman v. Keltner, 241 F.3d 842 (7th Cir. 2001), the U.S. Court of Appeals stated that medical care is needed under the Due Process Clause when there is "an objectively serious injury or medical need." The Chapman Court set the objective standard for such as "[an injury or need] that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would recognize the necessity for a doctor's attention." As the United States District Court for the District of South Carolina held in Russell v. Ensor, 496 F.Supp. 320 (SC 1979), however, "[t]he Constitution does not mandate that prisoners must have available to them all forms of non-emergency medical care at all times."

Whether a particular pretrial detainee is in need of medical care as required by the Constitution must be looked at on a case-by-case basis. It cannot be definitively said that the need for follow-up treatment for a tendon or rotator cuff injury, as referenced in your letter, would require the governmental entity with custody of a pretrial detainee to seek medical treatment to satisfy its Constitutional obligation to the detainee.

Further, the allocation of costs, should medical care be required, would also be dependant on the circumstances. Factors such as the following may play a part in the determination: Does the hospital receive federal funds such that it would be required to provide certain services free of charge to indigents pursuant to the Hill-Burton Act? See 42 U.S.C.A. §291c(e); Is there some state law which requires a hospital to provide certain services free of charge to indigents? See S.C. Code Ann. §§44-6-150 & 44-7-260(E) (Medically Indigent Assistance Program & Requirements for Licensure); As suggested by the Court in Myrtle Beach Hosp. Inc. v. City of Myrtle Beach, can the hospital recover its expenses from the detainee, his private insurance, or from federal or state indigent medical care funds if available?; Is there policy in place authorizing the payment of certain medical expenses by the governmental entity for pretrial detainees?; Is the hospital public or private? I would suggest that you or any of your Association members consult with their county or city attorneys to resolve such questions.

You have also asked whether a county or municipality would be "responsible for the non-emergency medical care for persons charged with a municipal court offense" when housed in a county detention center. Your question references both pretrial detainees and convicts and the costs of medical treatment and any ensuing medications or tests. A similar question was addressed in a prior opinion of this Office dated March 6, 1990 (copy enclosed). In that opinion, this Office noted that, while the question remains unsettled through legislation, there is authority which would indicate that the municipality would be responsible for the costs of incarceration of a person charged with a municipal court offense. In fact, in an opinion dated March 21, 1983, this Office stated:

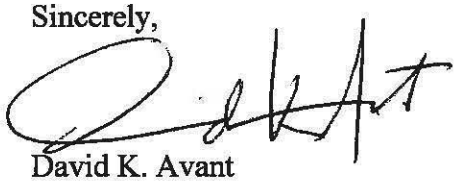
> It is the opinion of the Office that the Town of McCormick is responsible for the care and maintenance of prisoners arrested and/or convicted of violations of ordinances or of state criminal offenses within the jurisdiction of the Municipal Court, if those prisoners are lodged in the County Jail.

On the other hand, certain factors lend themselves to the opposite interpretation. Prior to 1980, S.C. Code Ann. 14-25-100 provided that if a person was arrested by a municipal police officer and committed to jail "... it shall be done at the expense of the city or town." This language was previously interpreted by the State Supreme Court in Greenville v. Pridmore, 162 S.C. 52, 160 S.E.2d 144 (1931), as requiring municipal authorities to pay any expenses for the confinement of the person in a county jail. This provision of the code, however, was repealed by the legislature in 1980 with no similar provision enacted. Such action by the legislature is an indication that their intentions in this area may have changed.

With regard to pretrial detainees charged with municipal violations and housed in a county facility, the analysis set out above should be employed to determine whether treatment is necessary and whether either governmental entity would be ultimately responsible for the costs. Again, I would suggest that you and the members of your association discuss any specific cases with the appropriate city or county attorney. As suggested in the enclosed opinion, it is apparent that a good number of jurisdiction resolve the issue through a contractual relationship between county and municipality.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant
Assistant Attorney General

DKA/an
Enclosure