1982 WL 189474 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
October 27, 1982

***1** Mr. W.E. Jenkinson, III
County Attorney
Jenkinson & Jenkinson
120 W. Main Street
Post Office Drawer 669
Kingstree, South Carolina 29556

Dear Mr. Jenkinson:
You have asked advice with respect to the extent of liability of Williamsburg County or the Williamsburg County Sheriff's Department for the payment of medical bills 'for prisoners or persons in custody at the Williamsburg County Memorial Hospital.' More specifically, you seek guidance as to the extent of liability where a prisoner has attempted to escape while being transported to Columbia and has been seriously injured in such attempt. In addition, you wish to know who is responsible for medical bills in the situation where a prisoner has been involved in a 'shootout', has been wounded and has required medical treatment 'for several days.'

While these questions have not been specifically addressed by the courts in South Carolina, and are certainly not free from doubt, it would appear that Williamsburg County is responsible for the medical expenses in the particular situations which you present. [1]

As a starting point, it is often acknowledged that
. . . in the absence of some express provision of the law, the public is not liable to a physician or surgeon for services rendered prisoners even though they are insolvent and unable to pay for such services themselves.

60 AM.JUR.2d, Penal and Correctional Institutions, § 16 at 819 (1972); Nolan v. Cobb Co., (Ga.), 81 S.E. 124 (1914). On the other hand, it is also well settled that where statutory authority exists
. . . a county is generally liable for the care and maintenance of its own prisons confined therein for offenses committed within the county.

72 C.J.S., Prisons, § 26(b) at 909 (1951).

There are several statutory provisions in South Carolina which generally concern the custody and care of prisoners. It should be emphasized at the outset, however, that I can find no statute which expressly mandates that the county ultimately bear all costs of medical treatment for all prisoners housed in county detention facilities. It can only be said that existing in South Carolina are provisions of law which express a general intent by the Legislature that medical services be provided to all prisoners in county operated facilities. Nevertheless, it is evident when this statutory intent is examined in conjunction with the constitutional requirements that all prisoners be afforded adequate medical treatment and in the context of the non-existence of any statute imposing the financial obligations of this treatment upon the prisoner or his family, such would strongly suggest that it is the county which is ultimately responsible for payment of the medical costs of all prisoners.

Section 24-17-110 of the Code of Laws of South Carolina (1976, as amended) provides:

the governing body of each county shall employ a physician whenever necessary to render medical aid to sick convicts and to preserve the health of the chain gang. The fees and expenses of such employment as well as for medicines prescribed shall be paid out of the road fund as other claims are paid against such funds.

***2** It should be noted that this provision deals only with convicted prisoners and would not appear to be controlling as to pretrial detainees. However, a strong argument can be made that even today, § 24-17-110 imposes an obligation upon a county to pay the expenses of medical treatment rendered convicted prisoners. [2] See also, § 24-7-140.

The only statute I can find which might relate to the custody and care of pretrial detainees is § 24-5-10 which states:
The sheriff shall have custody of the jail in his county and, if he appoint a jailer to keep it, the sheriff shall be liable for such jailer and the sheriff or jailer shall receive and safely keep in prison any person delivered or committed to either of them, according to law.

Courts in other jurisdictions have construed similar statutes as imposing a financial obligation upon the county or county sheriff's department to pay medical costs of prisoners. For example, in City of Tulsa v. Hillcrest Medical Center, (Okl.), 292 P.2d 430 (1956), the Oklahoma Supreme Court held that such a statute was virtually controlling in imposing an obligation upon a local entity, the city of Tulsa, to pay for medical services rendered to prisoners. The Court relied upon Smartt v. Board of Comms. of Okl., 67 Okl. 141, 169 P. 1101, L.R.A. 1918 C 313 where it was stated that 'the right of the sheriff to recover from the county certain private funds expended by him in feeding his prisoners after county appropriated funds had been exhausted was upheld.' Emphasizing that Smartt had recognized a statutory duty to receive and hold prisoners, the Court in City of Tulsa concluded that '. . . it necessarily follows that prisoners must be fed and provided with medical attention [by the city] where necessary.' Id. at 432. Continuing, the Court emphasized
. . . that the services rendered by the plaintiff were proper charges against the City under the facts in this case. That is not to say, and we do not hold that the governing board of the city may not exercise control in the matter of furnishing medical treatment for its prisoners if such board adopts plans and makes provision therefor. We do hold that the Chief of Police is under a duty to provide necessary medical treatment for prisoners in his custody and in the absence of arrangements made by the Mayor and City Commissioners for necessary medical services of prisoners, the City is liable for necessary medical services obtained by its Chief of Police in the care of indigent city prisoners.

Id. at 432-433. See also, City of Tulsa v. Sisler, (Okl.), 285 P.2d 422 at 423 ['So long as they were under arrest and held as city prisoners, it was the responsibility of the police to keep them safely, and this included the duty to furnish them with necessary medical care.']; § 24-5-80.

Also, pursuant to § 24-9-10 et seq., which concerns the inspection and enforcement of minimum standards of state and local penal facilities, the Department of Corrections has, by regulation, established standards of medical care to be afforded prisoners maintained in county correctional facilities. See, 'Minimum Standards for Local Detention Facilities in South Carolina' (April, 1979). Regulations 2050 et seq. generally mandate that each local correctional facility provide a broad gamut of medical treatment, including twenty-four (24) hour emergency medical and dental care. While nowhere do the regulations attempt to establish who is financially responsible for payment of the costs of such care, it is clear that the county, which is ultimately responsible for the operation of the facility, must at the very least provide the required care in order to meet the standards set in the regulations. Cases such as City of Tulsa v. Sisler, supra, and City of Tulsa v. Hillcrest, supra, strongly suggest that the establishment of such a duty to provide treatment imposes a similar duty to pay the costs resulting therefrom.

***3** Moreover, it is also recognized that even '[i]n the absence of a statutory provision for medical attendance it has been held that such attendance is a proper expense of imprisonment.' 72 C.J.S., Prisons, § 25(4) at 906. This office, in an opinion issued in 1973, stated that it thought cases such as Pisacano v. State, 188 N.Y.S.2d 35 would be 'controlling or highly persuasive' in

this State with respect to 'the liability of a county for pre-existing medical ailments . . . even apart from statute.' [3] The opinion noted in passing that

. . . the rationale of that case [Pisacano] is that sick prisoners must be cared for by prison physicians and are not free to choose their doctors nor are the doctors free to not accept them as patients. The case also holds that budgetary considerations are not a valid reason for failing to give medical treatment.

1973-1974 Op. Atty. Gen., No. 3497 at 94.

It should also be recognized in this context that the United States Constitution imposes certain minimum standards of medical care for prisoners upon prison officials. See, Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976); Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979). While some cases hold that these constitutional mandates do not necessarily impose a duty upon the governing body to pay for the costs of medical care so long as such care is in fact provided, see, e.g. Fant v. Fisher, 414 F.Supp. 807 (W.D. Okl. 1976), other courts reason that these constitutional duties 'compel[ ] a government agency or division responsible for supplying those medical needs to pay for them.' Massachusetts Genl. Hosp. v. City of Revere, 385 Mass. 772, 434 N.E.2d 185 (1982), cert. granted, 51 U.S.L.W. 3253 (Oct. 5, 1982). [4] The Court in Revere reached this conclusion even though the defendant City argued that the prisoner himself was liable for the costs of care.

Finally, it is generally recognized that specific statutory authority is necessary to require a prisoner or his family or estate to pay for the expenses of medical treatment rendered him as a prisoner. See, 72 C.J.S., Prisons, § 26(e) at 911 (1951). Auditor Genl. v. Hall, 300 Mich. 215, 1 N.W.2d 516, 139 A.L.R. 1022 (1942); Anno., 139 A.L.R. 1028; Compare, S.C. Dept. of Mental Health v. Turbeville, 273 S.C. 311, 257 S.E.2d 493 (1979); § 24-3-40. However, I have been able to find no such statutory authority in South Carolina. Again, this would appear supportive of the idea that the General Assembly intended that the prisoner not be charged, but instead that the county pay the costs of his medical treatment. Based on the foregoing reasons and authorities, therefore I would advise that Williamsburg County is probably responsible for the payment of prisoners' medical costs. However, I must once more caution that this conclusion is based upon an interpretation of the statutes and cases, rather than upon specific authority which places the financial burden upon the county in all circumstances.

***4** In response to your other inquiries, I cannot advise that the county possesses liability for medical costs of a prisoner dependent upon whether or not the prisoner caused his own injuries, such as by his attempt to escape. Case law from other jurisdictions lends little support for such a distinction. Courts elsewhere have concluded that a county's statutory liability for payment of medical expenses applies equally to those injuries incurred by the prisoner while attempting to escape.

For example, in Mt. Carmel Medical Center v. Board of Co. Commrs., (Kan.), 566 P.2d 384 (1977), an indigent prisoner was injured when he attempted to escape by jumping from the fourth floor of the county courthouse. The Medical Center which treated the prisoner brought an action against the county for payment of the prisoner's medical bills. Kansas law required the sheriff to furnish medical attention to a prisoner in his custody at the county's expense if the prisoner were indigent and no other funds were available. In this case, such requirements had been met. Therefore, the Court concluded that the county was responsible for the payment of medical expenses; the fact that the prisoner was injured while attempting to escape was immaterial. Said the Court,

The fact that Love was an escaped prisoner when he suffered the injury is not determinative of the sheriff's responsibility to provide medical services for the prisoner. The determinative factor is whether Love was in custody when the decision was made to transport Love to the hospital.

Id. at 388.

The same conclusion was reached by the Kansas Court in Dodge City Med. Center v. Bd. of County Commrs., (Kan. App.), 634 P.2d 163 (1981) in the context of the initial apprehension of a prisoner. In this case, the prisoner engaged in a shoot-out

with police and was seriously injured in the course thereof. The deputy sheriff summoned an ambulance and the individual was taken to the hospital where he was treated; no formal arrest was made until after the prisoner was released into the custody of the sheriff's department. The Court held that the county was responsible for payment of the medical bills, relying upon Mt. Carmel, supra.

We agree Lopez was 'in custody.' He was apprehended in the commission of a felony. Had he not been injured there is no question but that pursuant to duty the sheriff would have taken him to jail and not to the hospital . . .. For all practical purposes Lopez was in the sheriff's custody at all times.

Id. at 165.

Similarly, in Spicer v. Williamson, (N.C.), 132 S.E. 291, 44 A.L.R. 128, the North Carolina Supreme Court held the county liable for the medical expenses of a prisoner who was injured while resisting arrest. The Court observed:

It is clearly the duty of the board of Commissioners of a County, in this state, as prescribed by statute, to provide for necessary medical attention to a prisoner confined in the county jail, whether such prisoner has been committed to jail as the result of a preliminary trial or upon a final judgment on his conviction of a violation of law. The board of commissioners owes no less duty to a person, lawfully in the custody of the sheriff, awaiting a preliminary trial, and confined in jail, because he is unable to give bond for his appearance at such trial. The suggestion . . . that the board owes no duty to provide for the necessary medical attention until [the prisoner] has actually been placed in jail does not commend itself to us as within a necessary or reasonable construction of the statutes applicable.

***5** 44 A.L.R., id. at 1284-1285. See also, 18 C.J.S., Convicts, § 12 at 113 (1939); Dept. of Mental Hygiene v. Howley, (Cal.), 379 P.2d 22, 25 (1963) ['under the general law, the expense of capture, detention and prosecution of persons charged with crime is to be borne by the county.']; see generally, Anno., 44 A.L.R. 1285; 1973-74 Op. Atty. Gen., supra, at 93; but see, Gray v. Coahoma Co. (Miss.), 16 So. 903 (1894). Compare, Dade Co. v. Hosp. Affiliates Intl., Inc., (Fla.), 378 So.2d 43 (1980); Univ. Hospitals v. City of Cleveland, 28 Ohio Misc. 134, 276 N.E.2d 273 (1971).

I would appreciate any additional thoughts or suggestions which you might have with respect to these questions you have raised. I would be especially interested in knowing whether Williamsburg County possesses any local ordinance which in any way deals with the questions. At present, however, I would advise that Williamsburg County is ultimately responsible for the medical bills in the situations which you pose.

Very truly yours,

Robert D. Cook
Assistant Attorney General

Footnotes

1 This opinion does not attempt to address any defense or immunities which Williamsburg County might possess or raise in any litigation.

2 No attempt is made to address the question of whether the 'road fund' continues to exist in Williamsburg County. Whether or not it does, it would appear the intent of the statute was primarily to provide medical care for convicts rather than to spend money; and it would appear unlikely that the non-existence of this particular fund would repeal this statute or render it obsolete.

3 It should be emphasized that the reasoning of this opinion is primarily upon statute and reliance upon Pisacano is simply supportive of the conclusion.

4 The Supreme Court will now address the issue whether a 'municipality [has] . . . a constitutional duty, arising under [the] Eighth Amendment, to pay medical expenses of a felony suspect injured while being apprehended by police.' 51 U.S.L.W., supra, at 3177. It is not certain, however, whether the Court is interested in the substantive Eighth Amendment question or if the Court merely questions whether the Eighth Amendment is even applicable in the Revere case, where no conviction was present.

1982 WL 189474 (S.C.A.G.)

End of Document