

Opinion No. 36

PRISONERS; Medical care—COUNTY JAILS; Prisoners; Medical care — Sections 16-2818, 16-2822, 26-1002, 31-115, 71-308, Chapter 3, Title 71 Revised Codes of Montana, 1947.

HELD: With two exceptions, expenses incurred for necessary medical care furnished a prisoner in a county jail incarcerated because of an alleged violation of state fish and game laws or state highway laws are not chargeable against the state or county.

December 28, 1964

Mr. Chester L. Jones
Madison County Attorney
Virginia City, Montana

Dear Mr. Jones:

You have requested my opinion on the following question:

Are the expenses incurred for necessary medical care furnished to a prisoner in a county jail incarcerated because of an alleged violation of state fish and game laws or of state highway laws properly chargeable against the state or against the county?

The question of course presumes that such expenses are to be borne by the public in one way or another. I must disagree that this is generally true. While there is a diversity of holdings in other states, see 65 A.L.R. 2d 917, 44 A.L.R. 1285, 41 Am. Jur., Prisons and Prisoners, Sec. 24, 72 C.J.S., Prisons, Sec. 25 (b) (4), I believe there is no authority in this state for either a county or the state to incur such expenses as a regular practice.

Section 16-2818, Revised Codes of Montana, 1947, imposes upon the sheriff only the duty to provide prisoners "with necessary food, clothing, and bedding." There is no authorization for medical care or hospitalization. It is therefore my opinion that these ex-

penses are to be assumed by the particular prisoner. However, there are two exceptions to this rule.

The county commissioners are under the duty to "take all necessary precautions against * * * sickness, or infection (in the county jail)." Section 16-2822, Revised Codes of Montana, 1947. In accordance with this statute, when the condition of a prisoner is such that it threatens the health or well-being of other prisoners or of other persons present in the jail, the county is authorized to incur expenses to remedy this situation. In the event such expenses are incurred because of the condition of a prisoner incarcerated because of a violation of the fish and game laws or of the highway laws, the expenses should be borne by the state. It is my opinion that such expenses are "expenses of the county", as referred to in section 31-115, Revised Codes of Montana, 1947, or are "costs" as that word is used in section 26-1002, Revised Codes of Montana, 1947.

The other exception to the general rule that prisoners are responsible for the medical care or hospitalization furnished them arises where a prisoner is financially unable to provide such necessities for himself. In that event, section 71-308 and the other provisions of chapter 3, Title 71, Revised Codes of Montana, 1947, would control.

Very Truly Yours,

FORREST H. ANDERSON
Attorney General