

VOLUME NO. 34

Opinion No. 24

**PRISONERS - Medical care; COUNTY JAILS - Prisoners, medical care. Sections 16-2818, 26-1002, 31-114, and 31-115, R.C.M. 1947.**

**HELD:** The expenses for medication, medical services, and hospitalization for prisoners confined in the county jail prior and subsequent to judgment for violation of state fish and game laws or state highway laws must be borne by the appropriate state agency charged with the enforcement of such laws.

October 26, 1971

Mr. Gene McLatchy  
Deputy County Attorney  
Missoula County Attorney's Office  
Missoula, Montana 59801

Dear Mr. McLatchy:

I am in receipt of your request for my opinion concerning the application of section 16-2818, Revised Codes of Montana, 1947. Your question may be stated as follows:

Whether the highway patrol or fish and game department, on whose behalf a prisoner is detained in the county jail, is responsible for the expense of medication, medical services or hospitalization of such prisoner after judgment has been entered.

Section 16-2818, R.C.M. 1947, states:

“The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing and bedding, for which he shall submit claims for actual expenses incurred to the board of county commissioners for their determination, and, except as provided in the next section, to be paid out of the county treasury. **If in the opinion of the sheriff any prisoner, while detained, requires medication, medical services or hospitalization, the expense of the same shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner is being detained.** The county attorney shall initiate proceedings to collect any charges arising from such medical services or hospitalization for the prisoner involved if it is determined the prisoner is financially able to pay.” (Emphasis supplied)

To understand the full import of this statute a review of the legislative history must be made. Prior to 1965, section 16-2818, *supra*, read as follows:

“The sheriff must receive all persons committed to jail by competent authority, and provide them with necessary food, clothing, and bedding, for which he shall be allowed a reasonable compensation, to be determined by the board of county commissioners, and, except as provided in the next section, to be paid out of the county treasury.”

In December, 1964, immediately preceding the beginning of the 39th Legislative Assembly, then Attorney General Forrest H. Anderson ruled, in 30 **Opinions of the Attorney General**, No. 36, that:

“In accordance with this statute (section 16-2822, R.C.M. 1947), 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 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 39th Legislative Assembly, with knowledge of the opinion rendered by Attorney General Anderson, amended section 16-2818, *supra*, to include:

“If in the opinion of the sheriff any prisoner requires medication, medical services or hospitalization, the expense of the same shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner is detained.”

The 40th Legislative Assembly again amended the section by adding another sentence to read:

“If in the opinion of the sheriff any prisoner requires medication, medical services or hospitalization, the expense of the same shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner is being detained. The county attorney shall initiate proceedings to collect any charges arising from such medical services or hospitalization for the prisoner involved if it is determined the prisoner is financially able to pay.”

The legislature, by its amendments subsequent to the 1964 opinion of the attorney general, merely codified the conclusion reached in that opinion.

It should be noted also that sections 31-114 and 31-115, R.C.M. 1947, state that fees, fines and forfeitures collected by the courts for violation of the laws and regulations relating to the use of state highways shall be paid to the state treasurer and credited in part to the general fund after deducting all costs and fees, including:

“The expenses of the county, except fees of officers who are paid a regular salary, shall constitute a proper claim against the state of Montana and said claim or claims shall be paid in the manner provided by law out of the funds appropriated for such purposes.”

Further, section 26-1002, R.C.M. 1947, provides:

“In all cases where there is a prosecution for the violation of fish and game laws, and costs have been incurred therein, a cost bill shall be prepared, including the cost of board of prisoners, and presented to the state board of examiners, and, if by them allowed, the state treasurer shall thereupon pay the same out of the state game and fish fund to the county treasurer of the county wherein such costs were incurred.”

The legislature sought to remove the onerous financial burden placed upon the various counties for the cost of medical expenses for prisoners detained by authorities and agencies other than the county wherein the prisoner is detained. Section 16-2818, supra, accomplished this purpose.

THEREFORE, IT IS MY OPINION that:

The appropriate state agencies charged with the enforcement of the highway laws and regulations and the fish and game laws and regulations shall bear the expenses for medication, medical services and hospitalization incurred by prisoners incarcerated or detained in the county jails prior and subsequent to judgment for violations of the afore-mentioned laws and regulations, and such charges shall not be borne by the county.

Very truly yours,

ROBERT L. WOODAHL  
Attorney General