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OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

July 24, 1985

OPINION NO. 85-163

Honorable William P. Mills
State Representative
Box 672
Kensett, Arkansas 72082

Dear Mr. Mills:

This is in response to your request for an opinion on the following question:

Who is responsible for paying the cost of medical services rendered to a county or city jail inmate--the inmate or the county/city?

As a preliminary matter, it is well settled that inmates have a constitutional right to receive adequate medical care while in custody. Estelle v. Gamble, 429 U.S. 97 (1976). The right to receive medical care under the Eighth Amendment applies to both convicted prisoners and pretrial detainees.

Counties are charged by statute with the responsibility of feeding and keeping prisoners confined in the county jail. The quorum court must provide payment for such food and services. Ark. Stat. Ann. §46-404.1 (Repl. 1977). While there are no recent Arkansas Supreme Court decisions directly addressing the issue of whether "food and services" includes the responsibility for paying for medical services, the issue was addressed in Hart v. Howard County, 44 Ark. 560 (1884).

In Hart v. Howard County, the Court was faced with a situation in which a county prisoner became violently ill and required the services of a physician. Existing State law provided that all expenses attending the execution of a sentence were to be paid in the same manner as costs; that is, they are to be paid out of the estate of the prisoner, but if he had no estate, then payment was to be made by the county. In determining whether the above-mentioned law required the county to pay a prisoner's medical expenses, the court concluded: "... (O)ur law would be singularly deficient in humanity if it did not also include the attendance of a physician when necessary." 44 Ark. at p. 562.

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In view of the position taken by the Arkansas Supreme Court in Hart v. Howard County, supra, coupled with the general assembly's more recent pronouncement that the quorum court shall provide payment for necessary food and services for prisoners housed in the county jail [Ark. Stat. Ann. §46-404.1 (Repl. 1977)] it is the opinion of this office that the county must likewise provide payment for medical expenses incurred by prisoners housed in the county jail.

The situation is different as to city jails, however, because there is no statute on the subject matter. Thus, it is the opinion of this office that a city, at its discretion, may pay the costs or require the health care provider to seek payment from the prisoner. This is assuming the city has no ordinance providing for the payment of medical services rendered city jail inmates. I want to reiterate at this point, that a prisoner has a right to receive adequate medical care. A failure to provide such care could well result in liability for the governmental unit and its employees.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Joel Huggins.

Sincerely,


STEVE CLARK
Attorney General

SC:JH:sfc

cc: Files