

August 26, 1999

Mr. F.C. Rohrich  
Attorney at Law  
PO Box 657  
Linton, ND 58552-0657

RE: Costs of Incarceration

Dear Mr. Rohrich:

Your letter regarding court costs and costs of incarceration has been referred to me for reply. In your letter, you state that the city of Linton was charged approximately \$1,000 for the time a defendant was in jail for the class C felony charge of terrorizing. Attached to your letter is a copy of an arrest warrant and complaint showing a defendant was charged in the Emmons County District Court for terrorizing in violation of a state criminal law, N.D.C.C. § 12.1-17-04.

The question you presented is whether cities are liable for costs when cases are tried in district court for crimes that happened within city limits. The answer to your question depends upon the violation that is charged.

The first part of your question is whether the cities are liable for costs when cases are tried in the district courts for violations of municipal ordinances.

This office has had several occasions to consider the liability for costs of incarceration. In 1986 N.D. Op. Att'y Gen. 74, the Attorney General stated that a municipality is responsible for the cost of medical care provided to an indigent prisoner incarcerated at a county jail for a violation of a city ordinance if required by a contract for use of the services and facilities of a county correctional center. The Attorney General also stated that a city has the authority to assume financial responsibility for medical services rendered to indigent persons while those persons are incarcerated in a jail. In 1987 N.D. Op. Att'y Gen. 42, the Attorney General stated that a county is liable for jury costs, but not jail costs, incurred as a result of a trial in county court of a violation of a city ordinance when the ordinance violation has been transferred to the county court for a jury trial. I am including with this letter a copy of each of these two opinions.

The Attorney General referred to N.D.C.C. §§ 12-44.1-02, 40-05-01(41), and 40-05-02(5), in the analyses in the above two opinions. N.D.C.C. § 12-44.1-02 requires a city to adopt one of the statutory alternatives for the confinement of lawfully committed persons, including either establishing and maintaining a correctional facility at city expense or contracting for correctional facility services with a county, another city, or the state or federal government. N.D.C.C. § 40-05-01(41) authorizes the governing body of any municipality " [t]o establish, maintain, and regulate a jail and, with the consent of the board of county commissioners, to use the county jail for the confinement of persons charged with or convicted of the violation of any ordinance." N.D.C.C. § 40-05-02(5)

grants to either a city council or to a board of city commissioners the power "[t]o establish, maintain, and regulate a city jail, house of correction, and workhouse, for the confinement and reformation of disorderly persons convicted of violating any city ordinance, and to appoint necessary jailers and keepers."

The question of a county jail's liability for the medical expenses of a prisoner charged with a municipal ordinance violation has also been addressed in the courts. In L.P. Medical Specialties, Ltd. vs. St. Louis County, 379 N.W.2d 104 (Minn. Ct. App. 1985), the court sets forth the majority rule concerning the responsibility of a city or county to pay medical costs of an individual who has been placed in the custody of a correctional facility. Under the majority rule, known as the "nature of the offense" rule, a city is ordinarily liable for the medical expenses of a prisoner who has violated a municipal ordinance and if a state law is violated, the county is responsible. Under the minority rule, known as the "custody and control" rule, as set forth in Cuyahoga County Hospital v. City of Cleveland, 15 Ohio App. 3d 70, 472 N.E.2d 757 (Ohio Ct. App. 1984), the entity that has actual physical control or custody of the prisoner is responsible for the cost of care.

In answer to the first part of the question, in the absence of an agreement between a city and a county that provides otherwise, a city will ordinarily be liable for the costs of incarceration of persons held for violations of municipal ordinances, including ordinance violations that have been transferred to the district court for trial.

The second part of your question is whether a city is liable for incarceration costs for an offender charged with a violation of state law.

This office has addressed a parallel question in the past. In response to a question from the Towner County State's Attorney whether the state of North Dakota was responsible for the expenses incurred by Towner County in a felony criminal case, the Attorney General stated in a September 11, 1985, letter:

The responsibility for confinement costs of persons charged with a felony offense rests with the county. N.D.C.C. § 11-10-20 requires the board of county commissioners to provide a jail. In addition, N.D.C.C. § 12-44.1-02(l) requires a county to establish and maintain a jail at county expense or to contract with other counties or cities for jail services or the establishment of a regional correction center.

While N.D.C.C. ch. 12-44.1 has undergone extensive revision since the 1985 letter to the Towner County State's Attorney, N.D.C.C. § 12-44.1-02(l) still requires a county to establish and maintain a correctional facility at county expense. There has not been any change in the statutes since the September 11, 1985, letter that warrants a change of the conclusion in that letter.

It is my understanding that the Emmons County Jail is a grade three correctional facility. Under N.D.C.C. § 12-44.1-06, a grade three correctional facility may not confine an

inmate for more than ninety-six hours. You do not state in your letter how long the defendant was confined, where he was confined if he was confined for more than ninety-six hours, or whether there any extraordinary expenses, such as medical expenses, incurred on his behalf while he was incarcerated. If the defendant were to be held for more than ninety-six hours, N.D.C.C. § 12-44.1-02(1) requires that Emmons County contract with another county for his confinement.

In answer to the second part of your question, a county is ordinarily liable for the confinement costs of a person charged with a state law violation, even though the state law violation occurred within the city limits of a city located within the county.

Sincerely,

Ken Sorenson  
Assistant Attorney General

vjk  
cc: Donald Becker, Emmons Co. State's Attorney