

47 Op. Att'y Gen. No. 2

ARREST - County responsibility to third-party providers of medical care to persons who are arrested and eventually charged with violations of state law;

CORRECTIONAL FACILITIES - Local; county responsibility to third-party providers of medical care to persons who are arrested and eventually charged with violations of state law;

COUNTIES - Responsibility to third-party providers of medical care to persons who are arrested and eventually charged with violations of state law;

MEDICINE - County responsibility to third-party providers of medical care to persons who are arrested and eventually charged with violations of state law;

PRISONERS - County responsibility to third-party providers of medical care to persons who are arrested and eventually charged with violations of state law;

MONTANA CODE ANNOTATED - Sections 7-32-2201, -2205, -2245, -2245(2), -4201;

MONTANA LAWS OF 1995 - Chapter 388, section 3.

HELD:

A county is primarily responsible to third-party providers for post-arrest medical care given to a person who is ultimately charged with a violation of state law, but the county may thereafter seek recovery from another party pursuant to state law.

May 12, 1997

Mr. Brant Light
Cascade County Attorney
121 Fourth Street North
Great Falls, MT 59401

Dear Mr. Light:

You have requested my opinion on the following question:

Is the county or the citizen responsible to third-party medical providers for post-arrest medical care provided to a citizen ultimately charged with a violation of state law?

Your letter of inquiry states that this question arises from a difference of opinion between your office and the Cascade County Commissioners and Sheriff regarding the effect of 1995 Montana Laws, chapter 388. That Act amended existing laws relating to the costs of medical care of inmates in local detention centers, and the difference of opinion concerns the effective scope of the amendment.

For purposes of answering your question, it is important to keep in mind two fundamental distinctions in the chronology of a criminal proceeding. The first distinction is between the pre-adjudication and post-adjudication phases of detention. The Eighth Amendment to the United States Constitution (barring cruel and unusual punishment) applies only to the post-adjudication phase of a person's detention. The Due Process Clause of the Fourteenth Amendment to the United States Constitution governs pre-adjudication treatment. *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 245 (1983). The second distinction is between the pre-detention (or apprehension) phase of a person's contact with law enforcement and the post-detention phase. As I discuss in detail below, these distinctions matter more in the context of Montana law.

Turning to the subject of medical care for persons apprehended for suspected criminal activity, I start with the requirements of the United States Constitution, as declared by the United States Supreme Court:

The Due Process Clause, however, does require the responsible government or governmental agency to provide medical care to persons . . . who have been injured while being apprehended by the police.

City of Revere, 463 U.S. at 244. After recognizing this right, the Court went on to observe:

[T]he injured detainee's constitutional right is to receive the needed medical treatment; how the city of Revere obtains such treatment is not a federal constitutional question.

Id. at 245. The City of Revere case involved both a pre- adjudication and a pre-detention situation, but the pre-detention versus post-detention distinction was not a factor in the determination of the case.

In Montana, pre-adjudication detention of those suspected of committing crimes is the duty of counties. Mont. Code Ann. §§ 7-32-2201, -2205. Municipalities may establish and maintain detention centers, but they are not under an affirmative duty to do so. Mont. Code Ann. § 7-32-4201. In 1988, the Montana Supreme Court had occasion to consider a hospital's claim for recovery of medical costs incurred by a defendant who was treated while under arrest by city police officers, but not yet in confinement. Referring to City of Revere, the Montana Supreme Court said this about the health and safety of prisoners prior to adjudication:

Consistent with the mandate of the United States Supreme Court, the Montana Legislature has adopted legislation providing for the care of prisoners. Section 7-32-2222, MCA, provides: [statute quoted in full].

Montana Deaconess Med. Ctr. v. Johnson, 232 Mont. 474, 476, 758 P.2d 756, 757 (1988). The Court went on to conclude that the case presented a factual situation not contemplated by the statute. Johnson was hospitalized immediately following his arrest, but before he was taken to the county jail:

By its terms, § 7-32-2222(3), MCA, is not triggered until such time as "the sheriff, jail administrator, or private party jailer" determines that a detained person requires medical care. In addition, the statute, when read as a whole, assumes incarceration in the county jail at the time the need for medical care arises. Such is clearly not the situation in the instant case.

Montana Deaconess, 232 Mont. at 477, 758 P.2d at 758.

Given this lack of statutory authority, the Court adopted a "common law" approach in deciding this issue, and stated in conclusion:

A county is the largest subdivision of the state. Section 7-1-2101, MCA. Consequently, the county is vested with the primary responsibility of enforcing the laws of the state and maintaining facilities in furtherance of that task. See, §§ 7-4-2716, 7-32- 2201, MCA. Sound reasoning dictates that the performance of the county's task necessarily includes the assumption of the associated financial burden.

We, therefore, hold that the county is financially responsible for medical costs incurred by a detained person ultimately charged with a violation of state law but who is unable to pay. Montana Deaconess, 232 Mont. at 478-79, 758 P.2d at 759.

It was in part against this background that the legislature reexamined the issue of confinement costs for inmates, and passed 1995 Montana Laws, chapter 388, entitled in part: "AN ACT GENERALLY REVISING THE LAWS RELATING TO CONFINEMENT COSTS FOR INMATES, INCLUDING COSTS OF MEDICAL CARE" As I noted at the outset, the difference of opinion leading to this opinion request stems from the passage of this Act, the pertinent part of which amended Montana Code Annotated § 7-32- 2245:

Section 7-32-2245, MCA, is amended to read:

7-32-2245. Payment of confinement costs by inmate.

(1) An inmate found by the sentencing court to have the ability to pay is liable for the costs, including actual medical costs, of his the inmate's confinement in a detention center. The rate for confinement costs rate at which the inmate must pay the costs must be established at the sentencing hearing must be determined in accordance with 46-18- 403. Confinement costs, other than actual medical costs, must be ordered by the court and must be paid in advance of confinement and prior to payment of any fine.

(2) An inmate is responsible for the actual costs of medication, medical services, or hospitalization while the inmate is detained in a detention center. Inability to pay may not be a factor

in providing necessary medical care for an inmate. This section does not restrict an inmate's right to use a third-party payor.

1995 Mont. Laws, ch. 388, § 3.

For our purposes, the most significant new language is (2) above, which became Montana Code Annotated § 7-32-2245(2). It is clear that this section, as well as other portions of the Act, establishes an inmate's ultimate responsibility for medical costs incurred while he or she is "detained in a detention center." However, the Act does not appear to do anything to change the law regarding primary responsibility for a detainee's medical costs, and it does not mention at all the medical costs of a "pre-detainee." Instead, the only changes made were in the areas of **ultimate** responsibility and methods of collection for medical costs, where it is made clear that the detainee bears the ultimate responsibility. I find no indication that the legislature intended to shift primary responsibility for the costs of a detainee's medical care.

As the United States Supreme Court said in *City of Revere*:

If, of course, the governmental entity can obtain the medical care needed for a detainee only by paying for it, then it must pay. There are, however, other means by which the entity could meet its obligation.

City of Revere, 463 U.S. at 244-45. Establishing a detainee's ultimate responsibility for the costs of medical care is one thing, but changing the party responsible for the initial payment of the costs of medical care is quite another. If the legislature had meant to do this, they would have left some evidence of their intent, especially in light of the statement in § 7-32-2245(2), "Inability to pay may not be a factor in providing necessary medical care for an inmate."

I find nothing in the body of chapter 388, its title, or its legislative history which would indicate that the legislature had any intention of changing the existing arrangement of primary and ultimate responsibility. For example, the *Montana Deaconess* case, and the rule of law it established, is nowhere mentioned. Mins., Mont. Sen. Comm. on Local Gov't, Feb. 2, 1995, at 1-6; Mins., Mont. House of Reps. Comm. on Local Gov't, Mar. 7, 1995, at 14-17.

Had it intended to do so, the legislature would have had to affirmatively establish some other means by which to meet the obligation imposed by the Due Process Clause. It is clear they did not. I note especially the fiscal note attached to the bill and the remarks of Cascade County Undersheriff John Strandell before the Senate Local Government Committee, where I find no evidence of legislative intent to enact the change about which you inquire.

THEREFORE, IT IS MY OPINION:

A county is primarily responsible to third-party providers for post-arrest medical care given to a person who is ultimately charged with a violation of state law, but the county may thereafter seek recovery from another party pursuant to state law.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/rfws/lrb