

July 20, 2006

Ms. Mary Van Buskirk
Havre City Attorney
520 Fourth Street
P.O. Box 231
Havre, MT 59501-0231

Dear Ms. Van Buskirk:

You have requested my opinion on two questions that I have restated as follows:

1. May a county charge a city for preparing and maintaining criminal justice information for persons committed to the county detention facility at the request of a city police department in the course of enforcing state law?
2. May a county charge the city for the costs associated with transporting such a prisoner for necessary appearances before a city court judge.

Your request highlights a conflict between existing administrative rules and Montana statute. We are now proceeding to eliminate the conflict through a new proposed rule. Because of this, it has been determined that a letter of advice rather than a formal Attorney General's Opinion is the appropriate disposition.

The city of Havre and Hill County disagree over the financial responsibility of each entity for the costs of providing detention booking and processing in the preparation of MANS reports. This disagreement arises when a suspect has been arrested by the city police while enforcing state law and then has been placed in the county detention center. The City of Havre does not have its own detention facility and uses the county center to house such suspects. In the course of resolving the charges, the suspect may have to be brought from the detention center to the Havre City Court Judge for court appearances. The city and the county also disagree over which entity should bear the costs associated with these appearances in city court.

I.

Your first question requires the interpretation of Mont. Code Ann. § 44-5-213 and the rules adopted by the Department of Justice pursuant to this statute. Consideration must also be given to Mont. Code Ann. § 7-32-2242 to evaluate the possibility of conflict between the statute and the rules.

Montana Code Annotated § 44-5-213 established a “centralized state repository of criminal history record information to serve all criminal justice agencies in the state.” The statute directs the department to adopt rules for the implementation of the repository. Mont. Code Ann. § 44-5-213(1) and (7). The statement of intent attached to the implementing legislation provided that “the intent of the legislature in granting rulemaking authority with respect to this provision is to require the state repository to establish uniform procedures for the reporting of dispositions to it.” Statement of Intent, SB 271 (Ch. 525, L.1979).

The Department of Justice adopted rules to meet this legislative intent. These rules are found at ARM 23.12.101 to 106.

Rule 23.12.103 requires that “following a custodial or felony arrest the arresting agency or by agreement the custodial agency shall access the Montana arrest numbering system (MANS) through the CJIN and have a number assigned to that custodial or felony arrest.” The arresting agency “means the law enforcement entity that initiates the restraint of or notification to an individual charged with a criminal offense.” ARM 23.12.102(1).

The statute that directly addresses the payment of custodial costs for the use of a detention center requires the county to pay custodial costs where a person is arrested by the city police on a violation of state law:

If a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the costs must be paid by the county

Mont. Code Ann. § 7-32-2242(2)(b).

If there is a conflict between Mont. Code Ann. § 7-32-2242 and ARM 23.12.103, then the statutory language must prevail. Mont. Code Ann. § 2-4-305(5) (to be effective rule must “be . . . in accordance with standards provided by other provisions of law.”); see, e.g., Board of Barbers v. Big Sky College of Barber-Styling, 192 Mont. 159, 626 P.2d 1269 (1981) (rule that imposes more stringent qualifications than provided by statute invalid).

Ms. Mary Van Buskirk

July 21, 2006

Page 3

We have concluded that there is a conflict between the express language of the statute and ARM 23.12.103. The rule imposes financial responsibility upon the arresting agency, in this case the city police, for accessing the MANS system, for obtaining a number for the arrest, and for fingerprinting and registering the detainee, unless the county agrees otherwise. These costs are directly related to the confinement of the suspect. The statute expressly requires such costs to be paid by the county. The statutory language must control.

Therefore, it is my advice that when the city police make an arrest under the circumstances described above, the county must pay the cost of the administrative procedures required by ARM 23.12.101 to 105. The county may not charge the city for these costs.

II.

The analysis of your first question suggests the answer to your second.

Transportation costs to and from court are a necessary incident to confinement at a detention center. When the city police perform an arrest, and the arrest is not for violating a city ordinance, and the suspect is detained at a county facility, the cost of transporting the detainee to city court for necessary appearances must be paid by the county pursuant to Mont. Code Ann. § 7-32-2242(2)(b).

This letter is a letter of advice and not a formal Opinion of the Attorney General.

Very truly yours,

JON ELLINGSON
Assistant Attorney General

je/jym