

Opinion No. 68-26

February 26, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Messrs Johnny Elliott, Ralph Stanfield Paul Barnes, County Commissioners Curry County Clovis, New Mexico Sheriff Nelson Worley Curry County Clovis, New Mexico

QUESTIONS

FACTS

A parolee from the New Mexico State Penitentiary was arrested by a State Adult Probation Officer under authority of the Parole Board for an alleged violation of his parole. He was placed in the Curry County jail on October 26, 1967, pending further action by the Parole Board. On November 6, 1967, the prisoner attempted suicide. He was immediately transferred to the local hospital and then rushed by ambulance to a hospital in Amarillo, Texas for intensive care under the order of a local physician. The bills for medical treatment and transportation of this prisoner will be substantial.

Is the county or is the State Penitentiary responsible for paying for the expenses incurred in the transportation, hospitalization and treatment of this parolee?

CONCLUSION

The State Penitentiary.

OPINION

{*49} ANALYSIS

We start from the assumption that the treatment given to the preservation of his life and health. Assuming this to be true, the action of the county authorities in providing for the care and treatment of the parolee was entirely proper, Attorney General's Opinion No. 1141, issued December 17, 1913.

It is crucial that the person involved in this problem was a parolee and not a probationer. A paroled prisoner is one who has been committed to the custody and control of the New Mexico State Penitentiary and then conditionally released from the Penitentiary. Therefore, a parolee is merely serving his sentence outside the prison walls and is at all times under the custody and control and subject to the orders of the Parole Board, Section 41-17-24, N.M.S.A., 1953 Compilation; **Robinson v. Cox**, 77 N.M. 55, 419 P.2d 253 (1966).

Section 41-17-28, N.M.S.A., 1953 Compilation sets forth the procedure for returning parole violators. Subsections A and B provide as follows:

Return of parole violator. -- At any time during release on parole the board or the director may issue a warrant for the arrest of the released prisoner for violation of any of the conditions of release, or issue a notice to appear to answer a charge of violation. The notice shall be served personally upon the prisoner. The warrant shall authorize the superintendent of the institution from which the prisoner was released to return the prisoner to the actual custody of the institution or to any other suitable detention facility designated by the board or the director. If the prisoner is out of the state, the warrant shall authorize the superintendent to return him to the state.

B. The director may arrest the prisoner without a warrant or may deputize any officer with power of arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of the director, violated the conditions of his release. Where an arrest is made without a warrant, the prisoner shall not be returned to the institution unless authorized by the director or the board. pending hearing as provided by law upon any charge of violation, the prisoner shall remain incarcerated in the institution.

It can be seen that the parolee involved in this case was at all times in the custody and control of the New Mexico State Penitentiary. When the retake warrant was issued pursuant to Section 41-17-28(A), supra, it was the State Penitentiary which declared that { *50 } the freedom of the parolee should come to an end. And, through its authorized agent, the State Adult Probation Officer, it was the State Penitentiary which authorized the confinement of the parolee in the Curry County jail. Therefore, we are of the opinion that the parolee involved in this case was in the legal custody and control of the State Penitentiary at the time he injured himself. We therefore conclude that the proper governmental institution to bear the cost of the medical treatment for the parolee is the New Mexico State Penitentiary.

By: Paul J. Lacy

Assistant Attorney General