

Opinion No. 73-64

September 7, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Mr. Raymon Lara Chief, Local Government Division Department of Finance & Administration Legislative-Executive Building Santa Fe, New Mexico 87501

QUESTIONS

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Who is responsible for the payment of transportation costs under the provisions of Section 34-2-18, N.M.S.A., 1953 Comp.?

CONCLUSION

See Analysis.

OPINION

{*126} ANALYSIS

Section 34-2-18, N.M.S.A., 1953 Comp. (1971 P.S.), pertains to the emergency procedure for hospitalization of a mentally ill person and provides:

"34-2-18. Hospitalization on medical certification -- Emergency procedure -- Detention pending judicial determination. -- A. The superintendent or admitting physician of a hospital may admit any individual upon:

"(1) The sworn application, signed by any health or law enforcement officer, officer of any charitable institution, legal guardian, spouse or relative stating his belief that the individual appears to be mentally ill or because of his illness is likely to cause injury to himself or others if not immediately taken into appropriate custody, the grounds for such belief, and the names and addresses of the individual's legal guardian, spouse or nearest relative, if known; and

"(2) A certification by at least one [1] licensed physician that he has examined the individual and is of the opinion that the individual is mentally ill and, because of his illness, is likely to injure himself or others if not immediately taken into appropriate custody. An individual with respect to whom such a certificate has been issued may not be admitted on the basis thereof at any time after expiration of three [3] days after the date of examination by the licensed physician.

"B. Such certification shall authorize any health or law enforcement officer to take the individual into custody and transport him immediately to the nearest hospital that has the approval of the state department of public health as a suitable facility for the custody and care of such patients and which will admit the individual. A patient so admitted shall have the right to communicate with his legal guardian, spouse, a relative or any attorney at law at any reasonable time. It is the duty of the superintendent or admitting physician of the hospital to notify immediately the individual's legal guardian, spouse or nearest relative, if known, other than the signer of the application, of the condition and whereabouts of the individual concerned.

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"H. All persons, certificates, applications, records and reports involved in emergency hospitalization under this section are subject to all applicable provisions of sections 34-2-1 through 34-2-25 New Mexico Statutes Annotated, 1953 Compilation." (Emphasis added.)

Section 34-2-20, N.M.S.A., 1953 Comp., relates to costs of commitment proceedings:

" 34-2-20. The cost of proceedings. -- The cost necessarily incurred in determining that a poor or indigent person is mentally ill and securing his admission to the New Mexico Insane Asylum is a charge upon the **county whence he is committed**. Such costs include the fees of the licensed physician and witnesses, the cost of transportation to the asylum and such other costs in connection with the commitment of said person to the asylum as the judge may allow. **If the person sought to be committed is not a poor or indigent person, the costs of the proceedings are a charge upon his {*127} estate, or must be paid by persons legally liable for his maintenance, unless otherwise ordered by the judge.** If the alleged mentally ill person is adjudged not to be mentally ill in accordance with subsection e of section 5 [34-2-5] of this act, the judge may, in his discretion, charge the costs of the proceedings to the person or persons making the application, and judgment may be entered against him or them for the amount thereof and enforced by execution."

Thus, under these provisions of New Mexico law, a person can be committed to the nearest suitable hospital on an emergency basis upon sworn application of certain other persons plus certification by a licensed physician. Any health or law enforcement officer can transport the person to the hospital. The costs of transportation are a charge upon the county if the person is poor or indigent or, if he is not poor or indigent, are a charge either upon his estate or upon the person liable for his maintenance. Additionally, a judge may order such costs to be paid by the person making the application if the person who has been hospitalized is found not to be mentally ill.

Since law enforcement officers are authorized to transport the person to the nearest approved and available hospital and sheriffs' departments are most often made responsible for such transportation, we look to Section 15-43-11.1, N.M.S.A., 1953 Comp., which relates to expenses of sheriffs' departments incurred in official duties.

Chapter 364, Laws of 1973, amended this section. This 1973 amendment provides for reimbursement by the state to the county for per diem and mileage expenses incurred by sheriffs, deputies and guards in certain instances:

"C. Sheriffs, their deputies and guards shall be paid per diem and mileage expenses at the rate authorized in the Per Diem and Mileage Act for extraditing prisoners from without the state and for transporting persons committed by a court to any state institution or required to be returned by order of the court from any state institution to the county of commitment. The county may be reimbursed by the state for the per diem and mileage expenses incurred under this subsection by submitting claims for reimbursement to the department of finance and administration in accordance with the department's regulations."

The expenses for which the county will be reimbursed are expenses incurred in: (1) extraditing prisoners from without the state; (2) transporting persons committed **by a court to a state institution**; (3) transporting persons returned by **order of the court** from a **state institution**.

Under Section 34-2-18, **supra**, a person has not been committed by a court nor is he necessarily confined in a state institution. Therefore, the amendment of Section 15-43-11.1, **supra**, providing for reimbursement to counties does not apply to action taken under Section 34-2-18, **supra**. In order for a county to be reimbursed for expenses of the sheriff's department in transporting a mentally ill person, there must be a court order committing the person to a state institution or requiring that the person be returned from a state institution.

Expenses incurred as a result of action under Section 34-2-18, **supra**, are to be charged pursuant to Section 34-2-20, **supra**.

Therefore we are of the opinion that, as far as the Department of Finance is concerned, if a person has been hospitalized by emergency procedure, the state should not reimburse the county for expenses of the sheriff's department in transporting the person. Either the county, the estate of the person, or one legally liable for maintenance of the person is responsible for such transportation costs.

By: Jane E. Pendleton

Assistant Attorney General