

Date Issued: April 1, 1986 (AGO 86-14)

Requested by: Howard D. Swanson  
Assistant Grand Forks City Attorney

- QUESTIONS PRESENTED -

I.

Whether 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.

II.

Whether a city has the authority to assume financial responsibility for medical services rendered to indigent persons while those persons are incarcerated in a jail.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion 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.

II.

It is my further opinion 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.

- ANALYSES -

I.

N.D.C.C. section 40-05-01(41) authorizes a city to establish and maintain a jail and to use the county jail for confinement of persons charged with or convicted of a violation of any city ordinance with the consent of the board of county commissioners.

N.D.C.C. section 12-44.1-02 requires a city to adopt one of the statutory alternatives for the confinement of lawfully committed persons. That section provides as follows:

12-44.1-02. ESTABLISHING JAILS - JAIL CONTRACTS - REGIONAL CORRECTIONS CENTERS. For the confinement of lawfully committed persons, the governing body of a county or city shall do or shall participate in the doing of, one of the following:

1. Establishing and maintaining a jail at county or city expense.
2. Contracting for jail services and use of jail facilities

with another county or city maintaining a jail, with a regional corrections center, or with the state or federal government.

3. Establishing and maintaining, pursuant to chapter 54-40 and this chapter, a regional corrections center in conjunction with other counties and cities.

A county or city may additionally contract with a county or city of another state for the confinement of lawfully committed county or city inmates from that state in a North Dakota jail or juvenile detention center, or for the confinement of lawfully committed North Dakota inmates in a county or city facility of such other state. A city or county may contract for juvenile detention services with a privately operated juvenile detention center. Contracts with private agencies providing juvenile detention services may be entered into for up to seven years.

It is apparent from your letter requesting this opinion that the city of Grand Forks has not established or maintained a jail at city expense. Instead, the city is contracting with the Grand Forks County Correctional Center for jail services and the use of jail facilities for persons who have been charged with, or convicted of, city ordinance violations.

The question of the duty of governmental entities to provide and pay for medical services to a prisoner was presented in *City of Revere v. Massachusetts General Hospital* 463 U.S. 239 (1983). The court recognized that a government entity fulfills its constitutional obligation by ensuring that needed medical care of a prisoner is, in fact, provided. However, the court also stated that how the cost of that care should be allocated as between the government entity and the provider of the care is a matter of state law. The government entity can meet its obligation by admitting prisoners to hospitals which are required by law to supply a reasonable amount of free care to indigents or by imposing on the willingness of hospitals and physicians to treat the sick regardless of the individual patient's ability to pay. However, the court did state the following:

If, of course, the governmental entity can obtain the medical care needed for a detainee only by paying for it, then it must pay. 463 U.S. at 245.

N.D.C.C. section 12-44.1-14(6) requires the governing body of each jail to ensure that inmates have adequate medical care. In furtherance of this statutory requirement, an administrative rule, effective November 1, 1981, was adopted as N.D.A.C. section 10-05-06-02. That section provides as follows:

10-05-06-02. MEDICAL CARE ACCESS. Inmates shall have access to necessary emergency medical care, including but not limited to physical, psychiatric, and dental care. The cost of such medical care shall be paid subject to reimbursement from the inmate. Adequate staff, space, equipment, supplies, and materials shall be provided if health care is delivered in the jail. Nonemergency physical, psychiatric, and dental care

shall be provided to an inmate as directed by the health care administrator.

If the city of Grand Forks maintained its own jail or jointly operated a jail facility with another governmental entity, the city of Grand Forks would be required to pay all or a share of the costs of medical care of inmates subject to reimbursement from the inmate pursuant to N.D.A.C. section 10-05-06-02.

Your opinion request sets forth an underlying question which should be answered in light of the apparent negotiation difficulties between the city of Grand Forks and Grand Forks County pertaining to the use of county jail services and facilities by the city of Grand Forks. This underlying question is whether or not the county can, as a contract term and condition, require the city to assume the cost and pay medical expenses of prisoners incarcerated within the county facility for violation of city ordinances.

North Dakota law does not impose a mandatory requirement upon county jail facilities to receive or house persons charged solely with violations of city ordinances. Inmates of the United States of America must be admitted to all correctional facilities until such person has been discharged under federal law. N.D.C.C. section 12-44.1-08(2). However, in return for this mandatory receipt of federal prisoners, the United States shall be charged, for the confinement of its inmates, the amount actually required and expended by the jail maintaining the federal inmates. N.D.C.C. section 12-44.1-08(3). Such expenses would include medical expenses incurred by the federal inmates.

If the city of Grand Forks maintained its own jail facility, it would be required to provide medical services to its inmates pursuant to N.D.C.C. section 12-44.1-14(6). In addition, such city correctional facility would be required to pay the cost of such medical care for those inmates who are unable to pay for such care subject to reimbursement from the inmate should emergency medical care be required. In light of the decision of the United States Supreme Court in *Revere v. Massachusetts General Hospital* supra, the city may also be required to pay for such nonemergency medical care of an indigent inmate subject, of course, to reimbursement from that inmate. This responsibility of the municipality to provide medical care will continue should the county decline to accept and assume a city inmate's medical costs and expenses. The intent of Grand Forks County to decline to accept such a potential financial burden is evidenced by the apparent requirement of Grand Forks County in its contract with the city of Grand Forks to require the city to assume and pay such medical costs of its prisoners.

If the city of Grand Forks refused to assume responsibility for medical care of its indigent inmates and the county agreed to house the city inmates in its correctional facility, it is possible that the county would be required to substantially increase its daily cost of prisoner care to ensure adequate protection from the increased risk of medical expenses incurred by city inmates.

As stated previously, the county of Grand Forks has no statutory requirement to accept or house persons charged with or convicted of

violations of the Grand Forks city ordinances. To meet the statutory requirements, the city of Grand Forks must provide its own jail facility, become a part of a regional correctional facility, or contract with a separate correctional facility. Since the third alternative has been adopted by the city of Grand Forks, the contract between the city of Grand Forks and Grand Forks County for use of the county's jail services and facilities is no different than any other contract which is entered into after negotiation and agreement. No North Dakota statutory provision prohibits Grand Forks County from requiring that the city of Grand Forks, as a condition of the use of jail services and facilities, assume and pay all medical expenses incurred by persons accepted and housed by the Grand Forks County correctional facility who have been charged with or convicted of a municipal ordinance violation. Upon execution of that contract, the city would be responsible for the payment of such medical expenses or reimbursement to the county for such medical expenses paid on behalf of the city inmate. Upon receipt of the payment from the city, the county could assign its right of reimbursement from the inmate to the city of Grand Forks for later collection of that debt.

I have included with this opinion a letter dated November 27, 1984, directed to James T. Odegard, Grand Forks County State's Attorney, in which Assistant Attorney General Nancy K. Hoff earlier stated that the city would have the ultimate responsibility for medical care costs of a city inmate who is indigent, has no insurance, and is not eligible for public assistance, and a response to Brian D. Neugebauer dated October 19, 1981, which discusses a question similar to that presented in your opinion request.

## II.

Cities are twice provided with authority for the establishment of jails. N.D.C.C. section 40-05-01(41) authorizes the governing body of any municipality "to 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." Similarly, N.D.C.C. section 40-05-02(5) grants to either a city council or board of city commissioners the power "to 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." State law requires that a city do one of several things for the confinement of lawfully committed persons, which includes establishing and maintaining a jail at county or city expense. See N.D.C.C. section 12-44.1-02.

Any jail, to be properly maintained, must comply with the requirements contained in N.D.C.C. chapter 12-44.1, concerning jails and regional correction centers. The facility also must comply with jail standards promulgated by the Attorney General pursuant to N.D.C.C. section 12-44.1-24. One of the requirements imposed upon those who operate jails is to "ensure that inmates have adequate medical care." N.D.C.C. section 12-44.1-14(6).

Because cities are permitted, and sometimes required, to establish and maintain jails, and because a jail cannot be maintained without

ensuring that the inmates receive medical care, it can only be concluded that a city has the authority to assume the financial responsibility for furnishing medical services rendered to indigent persons in jails.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. section 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

NICHOLAS J. SPAETH  
Attorney General

Assisted by: Robert P. Bennett  
Assistant Attorney General

Blaine L. Nordwall  
Assistant Attorney General