

Opinion No. 2013-052

July 12, 2013

The Honorable Ray Hobbs, Director
Arkansas Department of Correction
Post Office Box 8707
Pine Bluff, Arkansas 71611-8707

Dear Director Hobbs:

This is my opinion on your question whether the county sheriff or the Arkansas Department of Correction (“ADC”) is responsible for taking a “back-up inmate”¹ from the county jail to ADC once ADC bed space is available.

RESPONSE

In my opinion, the sheriff is responsible for taking a back-up inmate from the county jail to ADC once ADC bed space is available. The law has stated since 1933 that ADC must take all inmates from the counties to ADC facilities. In my opinion, however, a law enacted in 2003 makes an exception to that rule for back-up inmates, and the counties are obligated to take back-up inmates to ADC once beds are available.

BACKGROUND

Some history and other background will aid in understanding. From 1905 until 1933, the sheriff was responsible for taking prisoners sentenced in his county to the penitentiary, and was entitled to receive expenses and a *per diem* fee from an ADC predecessor.² Since 1933, the law has provided generally that it is ADC’s

¹ I use your term “back-up inmate” to mean an inmate committed to ADC but held in the county jail “due to insufficient [ADC] bed space.” A.C.A. § 12-27-114(a)(1)(A)(i) (Repl. 2009).

² See Act 110 of 1905 (codified at Kirby’s Dig. § 5894 and C&M Dig. § 9698).

duty to take convicted persons from county jails to state prisons.³ In 1968, the General Assembly gave sheriffs both the discretion to immediately take some prisoners to ADC and the right to receive “therefor . . . the fees provided by law.”⁴

A system under which counties are reimbursed for holding back-up inmates began in 1981.⁵ In 1991, the rate paid to the counties was increased from a variable rate of up to \$18 a day to a flat rate of \$25 a day.⁶ In 2001, the *per diem* rate was increased to \$28 and was said to include a transportation component.⁷ Also in 2001, the General Assembly directed ADC to cooperate with county officials to determine the counties’ actual daily costs of housing state inmates.⁸ An ADC-formed committee, which included four sheriffs and a representative of the Arkansas Sheriffs’ Association,⁹ issued a cost study that included results of a survey of counties requesting cost data on, among other things, “[o]perational costs of . . . transportation associated with maintaining state inmates” in county facilities.¹⁰ Survey instructions stated that “[a] reasonable proportion of transportation costs that relate to transportation of inmates to the ADC may be included” in the responding county’s list of costs.¹¹

³ See Act 30 of 1933 (codified as amended at A.C.A. § 12-27-113(d)(1) (Repl. 2009)). The provision now reads: “It shall be the duty of [ADC] to transport all inmates committed to [ADC] to their respective institutions.”

⁴ Act 50 of 1968 (1st Ex. Sess.) (codified as re-enacted in Act 549 of 1993 at A.C.A. § 12-27-113(d)(3)).

⁵ See Act 737 of 1981 (see A.C.A. § 12-27-114(a)(1)(A)(i) for current law).

⁶ See Arkansas Division of Legislative Audit, *Special Report on Arkansas Department of Correction Prisoner Care Reimbursements* 1 (2002).

⁷ See *id.* at iii, 1, and 3; see also Arkansas Department of Correction, *Inmate Cost Study* 3 (2001).

⁸ See Act 1672 of 2001.

⁹ See Arkansas Department of Correction, *Inmate Cost Study* 6 (2001).

¹⁰ *Id.*

¹¹ *Id.* at appendix A3, p. 2.

In 2003 – in the legislative session next following the cost study’s completion – the General Assembly enacted a bill declaring that “[t]he reimbursement rate shall include the county’s cost of transporting [back-up] inmates to [ADC].”¹²

DISCUSSION

In my opinion, the sheriff is responsible for taking a back-up inmate to ADC.¹³ Since 1991, the reimbursement paid to a county for holding a back-up inmate has been determined by multiplying the number of days the person is held by a *per diem* rate.¹⁴ The General Assembly in 2003 surely was aware of that fact, particularly given the attention the issue received in 2001-2002, including the General Assembly’s own 2001 directive to ADC to determine the counties’ “actual *daily* costs” of holding state inmates.¹⁵ The General Assembly knew, in other words, that each county received exactly the same amount per back-up-inmate day.¹⁶

The law states that the “rate shall include the county’s cost of transporting” The meaning is clear: under the 2003 law the reimbursement paid to a county is deemed to include transportation costs, in every case. While the 2003 law does not

¹² Act 370 of 2003 (codified at A.C.A. § 12-27-114(a)(1)(A)(ii)).

¹³ In May 2013, a circuit court came to a different conclusion, ruling on an *ex parte* motion in a criminal case that the 1933 law requires ADC to transport all persons committed to ADC; that the 2003 law concerning the reimbursement rate and a county’s transportation costs applies only when a sheriff exercises his discretion under the 1968 law to immediately transport a prisoner; and that the 2003 law “does not shift the duty to transport ADC prisoners” from ADC to the sheriff. *State v. Stacy*, No. CR 2012-95ED (Carroll County Circuit Court, Modified Transport Order, May 7, 2013). For the reasons stated in the text accompanying this note, I respectfully disagree with the Court’s conclusions.

¹⁴ See, e.g., Arkansas Division of Legislative Audit, *Special Report on Arkansas Department of Correction Prisoner Care Reimbursements 1* (2002); Arkansas Department of Correction, *2012-2013 County Jail Reimbursement Summary*.

¹⁵ Act 1672 of 2001 (emphasis added).

¹⁶ While the law does not expressly require the reimbursement rate to be a *per diem* rate, it clearly contemplates as much. See, e.g., A.C.A. § 12-27-114(b)(1) (invoice relating to back-up inmate, prepared by ADC, “shall reflect the number of days an inmate was in the county jail in an awaiting-bed-space status”); A.C.A. § 12-27-114(b)(2) (sheriff “to certify the actual number of days the state inmates were physically housed in the county jail”); A.C.A. § 12-27-114(b)(4) (sheriff to retain documents “to confirm the number of days each inmate was housed in the county jail”). No law requires or expressly permits considering actual expenses incurred or anything at all except the number of back-up-inmate days.

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make an express exception to the 1933 general rule, it does so impliedly by requiring that the counties be paid for taking back-up inmates to ADC. In my opinion, it follows from this payment scheme that counties are responsible for taking back-up inmates from the county jail to ADC once ADC bed space is available.

Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMB/cyh