



STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN MCDANIEL

Opinion No. 2014-100

December 11, 2014

The Honorable Carlton D. Jones
Prosecuting Attorney
Eighth Judicial District South
Miller County Courthouse, Room 6
Texarkana, Arkansas 71854

Dear Mr. Jones:

You have requested my opinion concerning costs incurred by the Texarkana Arkansas Police Department (TAPD) in retrieving suspects on felony warrants obtained by the TAPD.¹ You identify the costs as those incurred in sending officers and equipment to retrieve a suspect who has left the jurisdiction; or alternatively, the cost of employing an extradition service to return the suspect for service of the warrant. As further background for your question, you report that the City of Texarkana, Arkansas primarily uses its bed allotment in the Bi-State Criminal Justice Center (“Justice Center”)² to hold misdemeanor offenders, and that felony prisoners are booked in at the Justice Center and subsequently transported to the Miller County Detention Center.

You ask in this regard: “Which entity bears the cost of retrieving the suspect on the felony warrant obtained by the TAPD – the City of Texarkana, Arkansas or Miller County, Arkansas?”

¹ You note that the TAPD is charged with general jurisdiction over criminal offenses occurring within the corporate boundaries of the City of Texarkana, Arkansas.

² The City shares a jail in the Justice Center with two Bowie County, Texas police agencies.

RESPONSE

Some initial clarification of the question is necessary. It is my understanding that your question is prompted by an effort on the part of the City to collect these costs from the County. That is, the City seeks to bill the County for the costs you have identified.

Absent some enforceable agreement between the City and the County that would support such a collection effort, it is my opinion that the County is likely under no obligation to pay the City for costs of this sort.

DISCUSSION

The right of a city (or county) to collect any expenses or fees incurred in order to obtain a criminal conviction is wholly dependent upon statutory authorization.³ Additionally, a “judgment for costs” must be entered by a court before any such expenses or fees can be collected:

In judgments against the defendant, a judgment for costs, in addition to the other punishment, shall be rendered. This judgment shall be taxed by the clerk and shall be for the benefit of the officers rendering the service.⁴

Costs included in the judgment are to be “paid as directed in the act regulating criminal proceedings.”⁵ This refers, in relevant part, to A.C.A. §§ 16-92-101–105 (Repl. 2006).⁶ Under that set of laws, costs that have been adjudged by the court are to be paid by the defendant, and the defendant’s property may be seized and

³ See *Aikens v. State*, 368 Ark. 641, 645, 249 S.W.3d 788 (2007) (“This court has consistently maintained that fees may only be charged by public officials if authorized by a statute or rule,” citing *Wood v. Tyler*, 317 Ark. 319, 877 S.W.2d 582 (1994) and *Huddleston v. Craighead County*, 128 Ark. 287, 194 S.W. 17 (1917)). See also *Jefferson County v. Hudson*, 22 Ark. 595 (1861) (reviewing various costs and expenses claimed by a sheriff and allowing only those provided for by statute).

⁴ A.C.A. § 16-90-113(a) (Repl. 2006).

⁵ A.C.A. § 12-41-505(b).

⁶ See Op. Att’y Gen. 2008-088 (tracing the history of § 12-41-505).

sold for that purpose.⁷ If uncollected, the costs adjudged in a felony case may be the responsibility of the county where the conviction is had.⁸

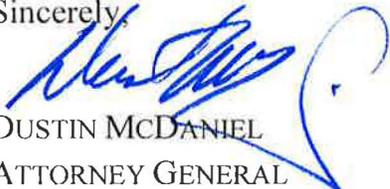
The allowance and recovery of the costs of prosecution thus depend wholly upon statutory authorization. In some circumstances, a county may be responsible for costs of prosecution. But only a court can speak to whether any particular expenses or fees may lawfully be included in the final judgment for costs.

Most importantly for purposes of your question, none of the statutorily-prescribed procedures governing the payment and collection of these costs offers authority for a city to collect such costs from a county. Nor has my research yielded any other source of authority for a collection effort of this sort. Arkansas Code Title 16, chapters 90, 92 and 93, address, respectively, the issues of judgment and sentence, costs, fees and fines. In my opinion, this set of laws so pervasively covers the field that it is likely intended to be exclusive, thus precluding any local regulation in the area.⁹

Absent some enforceable agreement between the City and the County, therefore, it is my opinion that the County is likely under no obligation to pay the City for the costs you have identified.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,



DUSTIN MCDANIEL
ATTORNEY GENERAL

⁷ A.C.A. §§ 16-92-101, -102, and -105. *See also* A.C.A. § 12-41-505(c) (“The property of the person shall be subject to the payment of the expenses....”).

⁸ A.C.A. § 16-92-105(a), (b). *See also* A.C.A. § 16-90-113 (b) (“In case of failure by the defendant to pay the costs [adjudged by the court], they shall be paid by the county where the conviction is had.”).

⁹ As indicated in previous opinions of this office, where the General Assembly has pervasively regulated a particular field, local legislation or regulation in the area may not be a “municipal affair” and may be preempted as contrary to state law. *See, e.g.*, Op. Att’y Gen. 2005-018 (relying on *Kollmeyer v. Greer*, 267 Ark. 632, 593 S.W.2d 29 (1980)). *See also* *City of Piggott v. Eblen*, 236 Ark. 390, 395, 366 Ark. 192 (1963) (“[w]hen we apply ... the long recognized rule governing municipal powers ... we must agree with the trial court that the ordinance in question is in conflict with our state statutes on this same subject. The statutes of our state, being paramount and supreme, have pre-empted the appellant in this field of legislation and, therefore, render the ordinance a nullity.”).