

OPINION NO. 95-028**Syllabus:**

The county sheriff has no authority to prescribe a schedule of fees to be collected from the personal funds of a person confined in the county jail for the cost of medical care provided to that person while so confined.

To: John E. Meyers, Sandusky County Prosecuting Attorney, Fremont, Ohio
By: Betty D. Montgomery, Attorney General, September 26, 1995

You have requested an opinion concerning the provision of medical care for inmates of the county jail. You first ask whether a county jail may implement a policy that requires persons confined in the county jail to pay a fee for the receipt of medical care while in the county jail. The proposal contemplates that the fee will be paid by prisoners from their personal funds, to the extent available, and that such fee will be based upon a schedule that does not exceed the actual cost of the medical care provided. You also ask, "what are the limits on the availability of the county to seek reimbursement from prisoners for the care provided?" Even though the county recognizes its duty to provide medical care for persons confined in the county jail, there remain certain concerns, which you explain as follows:

The jail administration believes that there are some abuses of the ability to see a physician, where inmates will demand to see a physician as much to get out of jail as to respond to a real need. It is felt that abuse would be self correcting if some fees were associated with the services provided. The plan would be to charge according to a schedule of fees expenses of inmates, to be taken from their commissary funds to the extent they are available. It is also anticipated that convicts could also be required to reimburse medical expenses after the fact.

Sheriff's Powers and Duties Concerning County Jail

The operation of county jails is governed in part by R.C. Chapter 341. Pursuant to R.C. 341.01:

The sheriff shall have charge of the county jail and all persons confined therein. He shall keep such persons safely, attend to the jail, and govern and regulate the jail according to the minimum standards for jails in Ohio promulgated by the department of rehabilitation and correction.¹ (Emphasis and footnote added.)

The courts have recognized that the responsibility for the operation of the jail is placed primarily upon the county sheriff. See, e.g., *Jones v. Wittenberg*, 330 F. Supp. 707, 713 (N.D. Ohio 1971), *aff'd sub nom. Jones v. Metzger*, 456 F.2d 854 (6th Cir. 1972). With respect to the care of prisoners held in the county jail, the court in *Justice v. Rose*, 3 Ohio Op. 2d 162, 165, 146 N.E.2d 162, 166 (C.P. Lawrence County 1956), *aff'd*, 102 Ohio App. 482, 144 N.E.2d 303 (Lawrence County 1957), held the sheriff to a duty to "exercise ordinary care for the protection and safety of prisoners confined to his jail."

In addition to the broad duty imposed by R.C. 341.01 upon the county sheriff, R.C. Chapter 341 enumerates other powers and duties of the sheriff with respect to the county jail. For example, R.C. 341.02 states in part:

The sheriff or jail administrator shall prepare written operational policies and procedures and prisoner rules of conduct, and maintain the records prescribed by these policies and procedures in accordance with the minimum standards for jails in Ohio promulgated by the department of rehabilitation and correction.

The court of common pleas shall review the jail's operational policies and procedures and prisoner rules of conduct. If the court approves the policies, procedures, and rules of conduct, they shall be adopted.

R.C. 341.02, therefore, requires the sheriff or jail administrator to establish written policies and procedures for the operation of the jail and rules of conduct for the persons confined in the jail. Before such procedures are adopted, however, they must be approved by the court of common

¹ The minimum standards for full service jails set forth in 15 Ohio Admin. Code Chapter 5120:1-8 govern such things as reception and release, security, housing, sanitation, communication, visitation, medical care and treatment, discipline, due process requirements, and staff, among others.

pleas. *See also* R.C. 311.20 (sheriff's allowance for cost of operating jail and feeding of inmates); R.C. 341.04 (requiring the county sheriff to "visit the county jail and examine the condition of each prisoner, at least once during each month"); R.C. 341.05 (permitting the sheriff to appoint an administrator for the county jail). Nothing within either R.C. Chapter 341 or R.C. Chapter 311 (county sheriff), however, expressly addresses the sheriff's adoption of a fee schedule such as you describe.

Pursuant to the statutory scheme governing the powers and duties of county sheriffs and the operation of county jails, the county sheriff has been granted a certain discretion in the establishment of policies and procedures governing the operation of the county jail and prisoner rules of conduct. There are, however, certain limitations imposed upon the sheriff with respect to the operation of the county jail and the care of persons confined therein. For example, pursuant to R.C. 341.01, the sheriff must comply with the minimum standards for jails promulgated by the Department of Rehabilitation and Correction. *See generally* note one, *supra*. Further, the written operational policies and procedures and prisoner rules of conduct are subject to the approval of the court of common pleas. R.C. 341.02.

Sheriff's Duty to Provide Medical Care for Persons in County Jail

As noted in your opinion request, it is clearly established that the sheriff has a duty to provide necessary medical care to persons confined in the county jail. *University Hospitals v. City of Cleveland*, 28 Ohio Misc. 134, 276 N.E.2d 273 (C.P. Cuyahoga County 1971); 1985 Op. Att'y Gen. No. 85-054; 1980 Op. Att'y Gen. No. 80-084. In addressing the county's obligation to provide medical care for persons confined in the county jail, Op. No. 85-054 noted both the duty of the sheriff under R.C. 341.01 to keep persons confined safely in the county jail and the constitutional rights of persons so confined to receive medical treatment. Based upon these principles, the opinion concluded in the syllabus that, "[w]here a person confined in the county jail is in need of medical care, including hospitalization, the county sheriff *must provide* such care *at county expense*, even where medical care is necessary as a result of injuries which have been self-inflicted." (Emphasis added.) *See generally* 15 Ohio Admin. Code 5120:1-8-09 (minimum standards for medical and health care services for full service jails).

With respect to the expense of such medical services, Op. No. 85-054 noted, "[p]ursuant to R.C. 311.20, the sheriff must render to the board of county commissioners 'an itemized and accurate account, with all bills attached, showing the actual cost of keeping ... prisoners and other persons placed in his charge.' 'Keeping' may be broadly construed to encompass medical care provided to prisoners." *Id.* at 2-202, n. 4 (various citations omitted). Op. No. 85-054 thus concluded that the cost of providing medical care for persons confined in the county jail is, at least initially, the responsibility of the county.

Statutory Scheme Governing Reimbursement for Expenses of Person Confined in the County Jail

Also addressed in Op. No. 85-084 were the provisions of R.C. 341.19, which states:

The board of county commissioners may require a person who was convicted of an offense other than a minor misdemeanor and who is confined in the county jail to reimburse the county for its expenses incurred by reason of his

confinement, including, but not limited to, the expenses relating to the provision of food, clothing, and shelter. The amount of reimbursement shall be determined by a court at a hearing held pursuant to [R.C. 2929.15].²

Upon the authorization of the board of county commissioners, the prosecuting attorney of the county may institute an appropriate civil action in the name of the state in the court of common pleas of the county, to recover from the convict the reimbursement for the expenses of his confinement in the county jail, as determined by a court pursuant to [R.C. 2929.15]. The action shall be brought within one year after the person is released from incarceration. The amount recovered shall be paid into the county treasury. (Footnote added.)

The circumstances in which the county may recover the costs of confinement from a person under R.C. 341.19, however, are limited by the terms of the statute. For example, reimbursement may be sought from a person who is confined in the county jail only if he "was convicted of an offense other than a minor misdemeanor." R.C. 341.19 (emphasis added). Persons confined in the county jail for other reasons are not subject to R.C. 341.19. Further, R.C. 2929.15 limits the amount of reimbursement obtainable under R.C. 341.19 to a maximum of forty dollars per day of confinement.³ See generally *State v. Henson*, 27 Ohio App. 3d 275, 500 N.E.2d 899 (Cuyahoga County 1985) (discussing operation of R.C. 341.19).

The General Assembly has enacted similar reimbursement provisions for persons confined in accordance with other statutes. See, e.g., R.C. 307.93 (confinement in multicounty, municipal-county, or multicounty-municipal correctional center); R.C. 341.14 (confinement in jail of another county); R.C. 753.02 (confinement at expense of municipal corporation in prison, station house, or county jail). In all such instances, however, whether a person confined in one of the named facilities must reimburse the subdivision incurring such expenses is determined in a hearing conducted in accordance with R.C. 2929.15. The amount of any such reimbursement is also determined in accordance with the limitations of R.C. 2929.15, i.e., a maximum of forty dollars per day of confinement.

While it is true that the sheriff has been granted certain authority under R.C. 341.01 and R.C. 341.02 to control the county jail and to adopt policies and procedures for the operation of the jail, the adoption of a fee schedule as you describe appears to exceed the sheriff's authority. The fact that there is a statutory procedure in place for reimbursement of the costs of a person's confinement in the county jail, i.e., R.C. 341.19 and R.C. 2929.15, suggests that the General Assembly intends that scheme to be the only manner in which the county may recover such costs. See generally *City of Cincinnati v. Roettinger*, 105 Ohio St. 145, 152, 137 N.E. 6, 8 (1922) (where a statute "in terms limits a thing to be done in a particular form, ... it necessarily implies that the thing shall not be done otherwise"). I must conclude, therefore, that a county

² Pursuant to R.C. 2929.15(B), "[t]he amount of reimbursement shall be determined at the hearing in light of the sentence of imprisonment given and according to the person's ability to pay. However, the actual amount to be paid shall not exceed the actual cost of the confinement or forty dollars for each day of confinement, whichever is less."

³ I express no opinion as to whether a court might find the cost of medical care provided to a person while confined in the county jail to be an expense "incurred by reason of his confinement" for purposes of R.C. 341.19 and R.C. 2929.15.

sheriff has no authority to prescribe a fee to be collected from the personal funds of a person confined in the county jail for the cost of medical care provided to that person while so confined.

Because the county sheriff is without authority to collect a fee from a person confined in the county jail as reimbursement for the expense of caring for that person while so confined, other than in the manner prescribed by R.C. 341.19 and R.C. 2929.15, it is not necessary separately to address your second question.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, the county sheriff has no authority to prescribe a schedule of fees to be collected from the personal funds of a person confined in the county jail for the cost of medical care provided to that person while so confined.