

## OPINION NO. 69-138

## Syllabus:

1. A county is not liable for additional hospital costs resulting from the private room of a municipal prisoner.
2. A county is not liable to a municipality for expenses incurred in guarding a municipal prisoner at a hospital.

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To: James V. Barbuto, Summit County Pros. Atty., Akron, Ohio  
By: Paul W. Brown, Attorney General, October 14, 1969

I have before me your request for my opinion based upon the following facts:

On January 18, 1969, a murder suspect was arrested by the Cuyahoga Falls Police Department. The suspect had attempted suicide and was removed to a hospital where he was guarded twenty-four hours a day by Cuyahoga Falls police officer. A private room, as opposed to a semi-private room, was required for the suspect - the suspect's hospitalization plan would pay the costs of a semi-private room only. An affidavit was filed on January 20, 1969, charging the suspect with murder. On February 13, 1969, the suspect was released from the hospital and on March 18 was indicted for murder.

Bills have been presented to the county by the hospital seeking the difference in rates between a semi-private room and a private room; and by the Cuyahoga Falls Police Department for maintaining a guard on the suspect. You specifically ask:

"1. Is the county liable for the additional hospital costs resulting from the private room for the suspect?

"2. Is the county liable to the Cuyahoga Falls Police Department for the services of the policeman for guarding the suspect at the hospital?"

From your letter, it would appear that no preliminary hearing was held in municipal court but that an indictment was returned against the suspect based upon facts presented directly to the grand jury. The jurisdiction of the common pleas court is invoked by "the return of a valid indictment and is not based on the process by which an accused is taken into custody or the findings made on the preliminary examination." Dowell v. Maxwell, Warden, 174 Ohio St. 289, 290 (1963); Opinion No. 68, Opinions of the Attorney General for 1967, pages 120, 124. The inference can be drawn that since the suspect in this case was not indicted until

March 18, and since the common pleas court had no jurisdiction over him until that date, he was not in any way a county prisoner; rather, since he was arrested and guarded by municipal authorities, the suspect was a municipal prisoner. The question then becomes whether a county is liable for services furnished a municipal prisoner by a hospital and for expenses incurred by a municipal police department in maintaining guards on the suspect's room.

Counties are political subdivisions liable only to the extent the statutes prescribe. The board of county commissioners acts in a political capacity and is clothed only with those powers delegated by statute. Portage County v. Gates, 83 Ohio St. 19, 30, 93 N.E. 255 (1910); Elder v. Smith, 103 Ohio St. 369 (1921). Public funds may only be disbursed by clear authority of law. The State, ex rel. Smith v. Maharry, 97 Ohio St. 272, 119 N.E. 822 (1918). In Ohio, the legislature has granted the board of county commissioners the power to expend public funds to pay the hospitalization costs of individuals in certain instances only. I refer you to an opinion by one of my predecessors which states:

"A board of county commissioners has no authority to expend public funds to pay hospital bills, except hospital bills for those persons mentioned in Sections 311.20, 339.11, and 5106.01, Revised Code." Opinion No. 2565, Opinions of the Attorney General for 1961, page 607.

Section 339.11, Revised Code, deals with caring for the indigent, sick and disabled. Section 5106.01, Revised Code, is related to caring for "needy persons who are permanently and totally disabled." Finally, Section 311.20, Revised Code, deals with the sheriff's duty to furnish all prisoners or other persons confined in the county jail certain health necessities, including washing and nursing at county expense. None of these three statutes enables the county to expend public funds to pay the hospitalization costs of a municipal prisoner.

Since the subject involved here is not indigent, or needy and permanently and totally disabled, or confined in the county jail, there is no authority for allowing a board of county commissioners to pay his hospital costs.

As previously noted, county commissioners may only expend public funds when there is a clear legislative grant. In the case of a municipal police department employing municipal police officers to stand guard on a municipal prisoner in his hospital room, there is no statutory authority allowing the county to disburse public funds to compensate the Cuyahoga Falls Police Department for maintaining such guard.

Therefore, it is my opinion and you are accordingly advised

that:

1. A county is not liable for additional hospital costs resulting from the private room of a municipal prisoner.
2. A county is not liable to a municipality for expenses incurred in guarding a municipal prisoner at a hospital.