

**OPINION NO. 80-084****Syllabus:**

1. Hospital expenses incurred by a parolee who, pursuant to an order of an officer of the Adult Parole Authority, has been arrested by a county sheriff for a parole violation and detained in the county jail, must be borne by the county.
2. Hospital expenses incurred by a probationer who has been arrested by a county sheriff and detained in the county jail must be borne by the county. Consequently, the Adult Parole Authority is not responsible for the hospital expenses of a probationer under its supervision and control when such costs are incurred while the probationer is detained in a county jail after being arrested by a county sheriff pursuant to R.C. 2951.08. (1978 Op. Att'y Gen. No. 78-067 overruled.)

To: **George F. Denton, Director, Department of Rehabilitation and Correction,  
Columbus, Ohio**

By: **William J. Brown, Attorney General, December 17, 1980**

I have before me your request for clarification of 1978 Op. Att'y Gen. No. 78-067, which concerns the responsibility for hospital expenses incurred by a probationer who has been arrested and detained by a county sheriff at the request of the Adult Parole Authority. You ask whether the same analysis applies to parolees.

Let me note, first, that the request from the Van Wert County Prosecutor upon which Op. No. 78-067 was based indicated that the person in question was arrested pursuant to R.C. 2951.08, which applies to probationers; R.C. 2951.08 begins: "During a period of probation. . ." Hence, Op. No. 78-067 was addressed to a situation concerning probationers. You indicate, now, that the factual situation which prompted that request did in fact relate to a parolee rather than a probationer. It is my intention at this time to address the actual factual situation of that request and of the request you have submitted, and I will accordingly reconsider the conclusion reached in Op. No. 78-067.

Your specific question is whether the Adult Parole Authority is responsible for medical costs incurred by parolees who are arrested at the request of the Adult Parole Authority. R.C. Chapter 5149 creates the Adult Parole Authority and defines its organization and duties. The Adult Parole Authority is, according to R.C. 5149.02, a regular administrative unit of the Department of Rehabilitation and Correction. R.C. 5149.04 states, in pertinent part, as follows:

(A) Persons paroled or conditionally pardoned shall be under jurisdiction of the adult parole authority and shall be supervised by the parole supervision section through its staff of parole and field officers in such manner as to insure as nearly as possible the parolee's rehabilitation while at the same time providing maximum protection to the general public.

Pursuant to R.C. 5149.12, the Adult Parole Authority exercises general supervision over the work of all probation and parole officers throughout the state, including those appointed by municipal judges.

For purposes of determining the liability of the Adult Parole Authority for hospital and medical costs of a parolee, it is of significance that, although the definition of "parole" given in R.C. 2967.01(E) provides that the legal custody of the parolee remains with the Department of Rehabilitation and Correction until a final release is granted by the Adult Parole Authority, the Authority does not have physical custody over such parolee. Legal custody connotes a supervisory role over the convict while released from confinement on parole, as opposed to a physical control similar to that employed while the convict is physically confined within the state's penal institutions. R.C. 2967.01(E) reads as follows:

"Parole" means the release from confinement in any state penal or reformatory institution by the adult parole authority created by section 5149.02 of the Revised Code and under such terms and for such period of time as shall be prescribed by the authority in its published rules and official minutes. A parolee so released shall be supervised by the authority. Legal custody of a parolee shall remain in the department of rehabilitation and correction until a final release is granted by the authority. (Emphasis added.)

R.C. 2967.15 enables the Adult Parole Authority to enlist the aid and cooperation of the sheriff's department in apprehending parole violators. R.C. 2967.15 states, in pertinent part, as follows:

Whenever any parole officer has reasonable cause to believe that any parolee under the supervision of the authority has violated the

terms and conditions of his pardon or parole, such parole officer may arrest such parolee, or may order any sheriff, deputy sheriff, constable, or police officer to make such arrest. A person so arrested shall be confined in the jail or detention home of the county in which he is arrested until released on parole or removed to the proper institution. (Emphasis added.)

In the situation you have posed, a parolee was under the supervision of the Adult Parole Authority. See R.C. 5149.04. A county sheriff arrested the parolee for a parole violation. I am assuming that the sheriff was acting on the order of an officer of the Adult Parole Authority. R.C. 2967.15 states that "[a] person so arrested shall be confined in the jail or detention home of the county in which he is arrested." It was while being held in the county jail that the parole violator in your situation became ill and was taken to the hospital.

When confined in a county jail, a parolee comes within the management and control of the county sheriff, who, according to R.C. 341.01, "shall have charge of the county jail and all persons confined therein" (emphasis added). R.C. 311.20 provides a sheriff with an allowance for prisoners, and also sets forth the duties of the sheriff to furnish at the expense of the county, "to all prisoners or other persons confined in the jail, fuel, soap, disinfectants, bed, clothing, washing, and nursing, when required, and other necessities as the court, in its rules, designates" (emphasis added). The term "necessaries," as used in R.C. 311.20, has been interpreted to "include medical expenses both in the jail and hospital confinement." University Hospitals v. City of Cleveland, 28 Ohio Misc. 134, 276 N.E.2d 273 (Cuyahoga County 1971).

The supplies and services which the board of county commissioners is required to provide for the county jail at county expense are listed under R.C. 341.19. Included within this list is "nursing when required." R.C. 341.19 also authorizes the county commissioners to provide a physician for the jail. Finally, a court of common pleas must prescribe rules for the county jail covering the employment of necessary medical or surgical aid. R.C. 341.06(F). See also 1954 Op. Att'y Gen. No. 4177, p. 429.

Hence, it appears that unless there is some express authority to the contrary, the medical expenses incurred by parolees who are arrested for parole violations and are confined in the jail of a county must be borne by the county pursuant to R.C. 311.20.

Authority to return parolees who are charged with parole violations to the appropriate state institution is set forth in R.C. 2967.15, which provides that "[a] person so arrested shall be confined in the jail or detention home of the county in which he is arrested until released on parole or removed to the proper institution" (emphasis added). To determine the ultimate responsibility for the medical expenses incurred in the apprehending, detaining and return of a parolee, reference must be made to the last sentence of R.C. 2967.15, which states: "Laws governing the prosecution and transportation of convicts apply to the apprehension and return of violators." The payment of costs for prosecution and transportation of convicts is covered in part by R.C. 2949.14, 2949.18 and 2949.19.

1960 Op. Att'y Gen. No. 1642, p. 563 interpreted these statutes in the context of whether the State of Ohio is to reimburse the county for the cost of hospital and medical services rendered to county jail prisoners awaiting delivery to a penal institution. In that opinion, one of my predecessors noted that "in none of the cited sections is there any mention of costs of hospital and medical services that might be provided for a convicted felon while awaiting transportation to a state penal institution." 1960 Op. No. 1642, at 565, mentioned the sheriff's duties as keeper of the county jail under R.C. Chapter 341, and stated:

Viewing the question purely from the standpoint of practical common sense, it is difficult to see how furnishing medical services

to a prisoner in the county jail, under circumstances here considered, is different from furnishing such service to any person in jail. Further, providing medical aid to a prisoner while awaiting transfer to a state institution clearly has no connection with the prosecution of such prisoner, for the simple reason that at that point, the task of the prosecution has been completed.

The interpretation given in 1960 Op. No. 1642, together with the last sentence of R.C. 2967.15, indicates that the medical expenses of a parolee in a county jail are within the realm of the sheriff's duties and are not to be passed on to the state. The statutes dealing with parole violation and the cases and opinions interpreting these statutes support the conclusion that medical expenses of a parolee arrested and detained by a county sheriff pursuant to R.C. 2967.15 are to be borne by the county.

In light of the foregoing, I must reconsider the conclusion I reached in 1978 Op. Att'y Gen. No. 78-067, which concerns the responsibility for hospital expenses incurred by a probationer who has been arrested and detained by a county sheriff at the request of the Adult Parole Authority.

Probation ordinarily relates to an action taken before an individual enters a penal institution under sentence, whereas parole relates to an action taken by a legal authority after the individual has been incarcerated. State ex rel. Corrigan v. Court of Common Pleas, 45 Ohio St. 2d 187, 343 N.E.2d 94 (1976). Probationers usually remain under the jurisdiction and control of the sentencing court of common pleas, which is authorized by R.C. 2301.27 to establish a county department of probation. Pursuant to R.C. 2301.27, 2301.28, and 2301.32, the court may employ the county probation department in the investigation and administration of its orders of probation, as well as probation orders of other courts and parole orders of the Adult Parole Authority.

Although supervision of probationers is normally vested in a court of common pleas or a county department of probation, such supervision may be given to the Adult Parole Authority by agreement under R.C. 2301.32. See R.C. 2951.05. If an agreement is made whereby the Adult Parole Authority accepts supervision of a probationer, it then has authority under R.C. 2951.08 to order a sheriff to effect the probationer's arrest. It is precisely this type of agreement that was presumed to exist in the factual situation underlying Op. No. 78-067.

In Op. No. 78-067, the understanding that the probationer was arrested and incurred hospital expenses while under the supervision and control of the Adult Parole Authority led to the conclusion that the Adult Parole Authority was responsible for such costs. This conclusion was correct with respect to expenses which arose while the arrested probationer was in the physical custody of the Adult Parole Authority. Yet, this conclusion overlooked the fact that the hospitalization of the probationer in question actually occurred while the probationer was being detained in the county jail, and thus, was within the physical custody of the county sheriff.

I have already pointed out the statutory language requiring all persons imprisoned in a county jail to be under the charge of the sheriff. Let me add that, while discussing the statutes dealing with the care of county jail prisoners, one of my predecessors noted:

It will be observed that these sections make no discrimination as to the classes of prisoners or the place from which these prisoners have been committed, but place the same duty on the sheriff as to every prisoner under his charge.

In light of these provisions of the law, which are manifestly intended to guard the health of the prisoners committed to a county jail, there could hardly be any question raised as to the obligation of

the county to take care of its prisoners, to the extent if necessary of providing them with hospitalization and medical and surgical care.

1954 Op. Att'y Gen. No. 4177, p. 429, 433-34; see R.C. 341.01, 341.04; 1928 Op. Att'y Gen. No. 2246, vol. II, p. 1505, 1510 ("the sheriff is authorized and required to furnish, at the expense of the county, such medical or surgical aid as may be necessary for any prisoner lawfully confined in jail. . ."); 1939 Op. Att'y Gen. No. 869, vol. II, p. 1168 ("[i]t is the duty of the sheriff to furnish, at county expense, such surgical service as may be necessary to the health of a prisoner who has been transferred to such county from the county jail of a second county, under the provisions of Section 3170, General Code").

In light of the authorities cited above, I conclude that hospital expenses incurred by a probationer who has been arrested by a county sheriff and detained in the county jail must be borne by the county. Consequently, I conclude that, absent express statutory provisions to the contrary, the Adult Parole Authority is not responsible for the expenses of a probationer under its supervision and control when such costs are incurred while the probationer is detained in a county jail after being arrested by a county sheriff pursuant to R.C. 2951.08, and I overrule the contrary conclusion reached in Op. No. 78-067.

Accordingly, it is my opinion, and you are hereby advised, that:

1. Hospital expenses incurred by a parolee who, pursuant to an order of an officer of the Adult Parole Authority, has been arrested by a county sheriff for a parole violation and detained in the county jail, must be borne by the county.
2. Hospital expenses incurred by a probationer who has been arrested by a county sheriff and detained in the county jail must be borne by the county. Consequently, the Adult Parole Authority is not responsible for the hospital expenses of a probationer under its supervision and control when such costs are incurred while the probationer is detained in a county jail after being arrested by a county sheriff pursuant to R.C. 2951.08. (1978 Op. Att'y Gen. No. 78-067 overruled.)