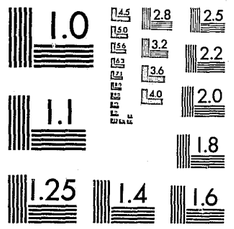

CR-sent 5-20-83

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January 5, 1983

No. 8134

This opinion is issued in response to questions presented by the Honorable Larry Campbell, State Representative.

QUESTION PRESENTED

Under what circumstances, if any, may a county require reimbursement from a municipal government for housing of prisoners in a county facility?

ANSWER GIVEN

Generally the county bears the expense of housing all prisoners in the local correctional facility. ORS 169.150, 169.220. However, a county is not required to accept persons sentenced to prison for violation of municipal ordinances unless it has agreed to do so, and it may require reimbursement for its costs of housing municipal prisoners as a condition of such agreement. Such reimbursement is required for cities organized under the 1893 Incorporation Act. For other cities, if a county accepts muncipal prisoners without such agreement for reimbursement, it will probably be able to recover its costs of housing them on the basis of an implied agreement.

DISCUSSION

ORS 169.150 provides:

"The charges and expenses for safekeeping and maintaining all persons duly . . . sentenced to imprisonment in the county local correctional facility . . . shall, unless otherwise provided by law, be paid out of the treasury of the county."

ORS 169.220 provides:

"All persons lawfully confined in a county local correctional facility . . . shall be fed and maintained at actual cost to the county."

Thus as a general rule the county bears the expense of housing prisoners without reimbursement. The question presented asks under what circumstances the general rule of non-reimbursement is inapplicable, so that a city would be required to pay the county for housing prisoners.

ORS 221.914, which is applicable only to cities incorporated under the 1893 Incorporation Act,(FN1) contains an exception to the rule of nonreimbursement. Subsection (2) provides:

"Any person sentenced to imprisonment for the violation of an ordinance may be imprisoned in the jail of such city; or, if the council by ordinance so prescribes, in the county jail of the county in which such city is situated, in which case the expense of imprisonment shall be a charge in favor of such county and against such city. Before any such person can be imprisoned in the county jail, the consent of the county court shall be first obtained."

ORS 221.914(2) authorizes a city, with the consent of the county, to imprison in the county jail those who violate a municipal ordinance. The city is responsible for the expense of imprisonment; the statute requires it to reimburse the county. By implication, since the statute specifies "violation of an ordinance," the city is not responsible for costs of housing of persons convicted in municipal court of violating a state law.

For cities not incorporated under the 1893 Act (a majority of Oregon cities), no provision such as ORS 221.914(2) exists. Nevertheless, counties may be able to require reimbursement from these cities as well. ORS 169.030 provides the basis for the conclusion. ORS 169.030 provides:

"Every county and city in this state shall provide, keep and maintain within or without the county or city, as the case may be, a local correctional facility for the reception and confinement of prisoners committed thereto. . . . Any county and any incorporated city may, by agreement, provide, maintain, and use for their separate requirements, such a local correctional facility as is required by this section."

Every Oregon city must provide for a local correctional facility, either directly or by agreement with a county for use of its facility.(FN2) There is a strong implication that if the city fulfills this responsibility by agreement for use of a county facility, the city will pay for such use. Certainly the county may require such payment as a part of the agreement.

The statutory scheme thus provides for separate city and county correctional facilities, and for the alternative under ORS 221.914 and 169.030 of use by the city of the county facilities, with the consent of or by agreement with the county. It is strongly implied that the county facility is the place of imprisonment for violation of state laws or county ordinances, and that the city facility is the place of imprisonment for violation of city ordinances. The county facility may substitute for the city facility only with the consent of (ORS 221.914) or pursuant to agreement with (ORS 169.030) the county. ORS 221.914

specifically imposes cost responsibility on the city; the county clearly has the option to require payment as a condition of its agreement under ORS 169.030.

It may be argued that under ORS 137.124(3), a municipal or district judge has authority to commit a person convicted of a city ordinance violation to a county jail, even if the county has not agreed to accept such municipal offenders. That statute provides:

> "If the court imposes a sentence of imprisonment upon conviction of a misdemeanor, it shall commit the defendant to the custody of the executive head of the correctional facility for the imprisonment of misdemeanants designated in the judgment." ORS 137.124(3).

There is no limitation in this language on the authority of the judge to designate any "correctional facility for the imprisonment of misdemeanants." However, we do not read it to impose any obligation on a county to accept prisoners in its jail who were not sentenced within the county for violation of state statutes or its own county ordinances.

In fact, ORS 137.130 and 137.140 specifically provide for imprisonment in county jails, in certain circumstances, of misdemeanants sentenced in other counties. If a county does not have a jail, a court is authorized to sentence or a sheriff to deliver a prisoner to the jail of an adjoining county, or if there is none, to the nearest county jail. ORS 137.130. If the court finds that no sufficient jail exists in the county, an

adjoining county or the nearest county with a jail, the court may order confinement in any county jail in the state. ORS 137.140.

No equivalent statutory obligation exists for acceptance of prisoners who were sentenced for violation of city ordinances. We conclude that ORS 169.030 places responsibility for housing of such prisoners upon the city, except to the extent that by agreement or consent the county is willing to accept such prisoners in the county jail.

If there is no agreement and therefore no obligation of the county to accept a city prisoner, it may nevertheless do so. If the city is incorporated under the 1893 Incorporation Act, "the expense of imprisonment shall be a charge in favor of such county and against such city." No formal or informal agreement by the city to pay for the imprisonment is necessary; the obligation is statutory. The consent of the county court is required, but we see no reason under the statute why that could not be a continuing consent, rather than an individual consent for each prisoner.

If the county accepts a prisoner from a city which is not incorporated under the 1893 Incorporation Act, without any agreement or express provision for reimbursement, there is no specific statutory requirement for reimbursement by the city. We conclude that it should be held that the county's acceptance of the prisoner is on the implied condition that the city reimburse the county.

However, in City of Pasadena v. Los Angeles County, 118 Cal App2d 497, 258 P2d 28 (1953), the city placed persons arrested for state law offenses in its jail pending arraignment. It then sought reimbursement from the county. The court held that the city had no obligation or authority to house the prisoners, and could not recover for doing so voluntarily. The City of Pasadena case is distinguishable from that before us, since there the prisoners were placed in the city's jail by the city itself, rather than by a court. The responsibility of the city to house its own prisoners and accordingly to pay for costs of their housing, seems clear enough so we believe a court will find that an agreement to pay is implied by sending a prisoner to the county fail.

It is possible, of course, that the courts will hold otherwise. In that case, the county may require reimbursement for the future by simply notifying the city that it will expect to be paid for any municipal prisoners in its jail or to be received in future. No agreement is necessary; delivery to or retention of a prisoner in the county correctional facility, after such notice, will be sufficient to give rise to the city's obligation to pay. Of course it is extremely desirable for the city and county to enter into an agreement to cover the matter.

We wish to make it clear that this opinion does not apply to persons sentenced in muncipal court to imprisonment for violation of state statutes. Such defendants are to be sentenced to imprisonment in the county correctional facility at county

expense. This opinion applies to persons sentenced to imprisonment by muncipal or district courts for violation of city ordinances.

Dave Frohnmayer
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1. ORS 221.901 to 221.928.

2. Even in the absence of the last sentence of ORS 169.030, the city and county could enter into an intergovernmental agreement under ORS 190.010 to provide for shared correctional facilities.

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