

March 28, 1975

OPINION LETTER NO. 96  
Answer by letter-Klaffenbach

Honorable A. J. Seier  
Prosecuting Attorney  
Cape Girardeau County  
721 North Sunset  
Cape Girardeau, Missouri 63701



Dear Mr. Seier:

This letter is in response to your questions asking:

- "1. Is a County responsible for transportation costs when there is a commitment to a State Hospital on application of a 'police officer or any other person stating his belief that the individual is likely to cause injury to himself or others if not immediately restrained,' pursuant to RSMo. 202.800?
- "2. Is a County responsible for transportation costs when a patient is taken to a hospital by a 'police officer' pursuant to RSMo. 202.803?
- "3. Is RSMo. 202.440 authority for a police department of a local municipality to charge the county for transportation costs when a patient is confined pursuant to RSMo. 202.800 or RSMo. 202.803?"

You also state that:

"A controversy has arisen between Cape Girardeau County, City of Cape Girardeau Police Department and City of Jackson Police Department relating to transportation costs for patients who have

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been confined in State Hospital No. 4 at Farmington, Missouri, under RSMo. 202.800 and RSMo. 202.803. The County takes the position that since these are emergency confinements pursuant to the law and that there is no express authority for the county to be responsible for the mileage and other incidental transportation costs for confinement of these prisoners; they are not liable. Both cities take the position that pursuant to RSMo. 202.440 they can make claim against the county for reimbursement of transportation costs, including overtime of officers necessary to transport a patient to the hospital."

Section 202.440, as amended by the 77th General Assembly, Second Regular Session, H.C.S.S.B. No. 374, states:

"1. The sheriff or other person appointed to transport a patient to or from a state mental facility, as complete compensation for such transportation, shall be allowed the following amounts:

(1) Fifteen cents per mile for each mile to and from the facility;

(2) One dollar per day for the support of the patient while enroute; and

(3) Four dollars per day for each assistant accompanying the sheriff as total compensation to the assistant.

"2. Mileage in each case shall be allowed for the nearest route usually traveled, and the amount allowed as mileage shall cover all transportation expenses of whatever kind and nature.

"3. The costs specified in this section shall be paid out of the county treasury of the proper county."

We believe that the key word in the above section is "appointed." The legal correspondence accompanying your question raises several possible applicable sections. That is, the suggestion has been made that Section 202.800, RSMo, authorizes the probate judge to "appoint" a police officer for the purpose of such transportation. However, our

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review of that section leads us to conclude that it provides that any court of record may authorize a police officer to take the individual into custody. Section 202.803, to which you refer, does not involve any action by a court and is simply an emergency commitment without medical certification authorizing a police officer to take the individual into custody. A custody authorization is not, in our view, an appointment under Section 202.440 for the purposes of payment for transportation notwithstanding the fact that such custody also authorizes transportation to a mental facility.

Section 202.813, RSMo, does require that the county court or the probate court in the City of St. Louis or a class one county, under certain conditions, shall "arrange for the" transportation of a patient who is indigent and about to be hospitalized under Sections 202.797, 202.800, 202.803, or 202.807. The primary duty for such transportation is therefore on the county court or such probate court. This indicates, however, that the county court or such probate court must "arrange" such transportation and that it is the county court or such probate court which "appoints" persons authorized to receive reimbursement under Section 202.440.

In the situations about which you inquire, it appears that the transportation is made without the knowledge or consent of the county court. In such circumstances, we believe the person transporting the patient, even though the patient is indigent, is not entitled to payment under Section 202.440. This is because the county court has the right to "appoint" the sheriff or such persons as it deems necessary or desirable to make such transportation and because, in our view, other transportation not arranged or authorized by the county court is gratuitous.

We realize that the exigencies of the situations arising under the emergency commitment statutes preclude the county court from acting on each individual case. However, in light of the court's responsibility respecting indigent patients, if the sheriff's office is not used for such transportation, arrangements should be made in advance for the appropriate transportation and "appointment" of other persons to act in lieu of the sheriff pursuant to such sections.

If city police officers are appointed by the county court to transport the patient under the provisions of Section 202.813, the charges for such services are limited as provided in Section 202.440.

Because of the nature of the duties of municipal police departments, police officers may be required to transport such patients to hospitals as a part of such duties and not under appointment as provided in Section 202.440. However, in such cases the

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costs involved must be borne by such cities and are not chargeable to the county.

Finally, we understand that your questions do not involve any action taken or orders issued under the provisions of Section 475.355, RSMo, and we, therefore, do not discuss the effect of such provisions.

Yours very truly,

JOHN C. DANFORTH  
Attorney General