have stated the veteran was prevented from serving the full 180 days because of aggravation of a pre-existing disability. Whether aggravation of a disability satisfies the "reason of physical or mental disability incurred in line of duty" provision of the statute has not been decided by a court in relation to this act.

However, the last sentence of 1946 1st Ex Sess PA 9, § 1; MCLA 35.601; MSA 4.0064(1), indicates a general legislative intent to look to federal authority to interpret the eligibility provisions of the Veterans Trust Fund Act. Aggravation of a pre-existing disability is considered at 38 USCA 101(16), which reads as follows:

> "The term 'service-connected' means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service."

Accordingly, it appears that the aggravation of a pre-existing disability which results in service of less than 180 days in such a disability incurred in the line of duty as will satisfy the provisions of the act.

FRANK J. KELLEY,
Attorney General.

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COUNTIES: Medical Expenses of County Jail inmates.

Subject to certain exceptions, a county is responsible for the medical expenses of county jail inmates.

A county has no authority to seek reimbursement from an inmate for the cost of any medical care provided.

An inmate of a county jail is not eligible for medical assistance under Medicaid.

A county is responsible for providing medical care to county jail inmates only during the period such persons are actually incarcerated.

A county may seek reimbursement from the demanding authority for necessary medical expenses incurred in apprehending and returning a fugitive from an out-of-state jurisdiction.

Opinion No. 4957 February 25, 1976.

Honorable John Welborn
State Senator
State Capitol
Lansing, Michigan

Honorable Wayne B. Sackett
State Representative
P. O. Box 119
Lansing, Michigan

Honorable Robert A. Welborn
State Representative
State Capitol
Lansing, Michigan

Honorable Howard Wolpe
State Representative
State Capitol
Lansing, Michigan

You have requested my opinion on certain questions relating to the responsibility of a County to pay for the medical expenses of inmates in the County Jail. Specifically, you ask the following questions:

1. Is the County responsible for medical expenses of County Jail inmates?

In *Fitzke* v *Shappell,* 468 F2d 1072 (CA 6, 1972) the United States Court of Appeals for the Sixth Circuit, considering an alleged denial of medical care to an inmate of a Michigan county jail, held that such denial constitutes a deprivation of constitutional due process. The Court stated at 1076:

> "Thus it is that fundamental fairness and our most basic conception of due process mandate that medical care be provided to one who is incarcerated and may be suffering from serious illness or injury. This is not to say that every request for medical attention must be heeded nor that courts are to engage in a process of secondguessing in every case the adequacy of medical care that the state provides. But where the circumstances are clearly sufficient to indicate the need of medical attention for injury or illness, the denial of such aid constitutes the deprivation of constitutional due process."

Furthermore, the Michigan Court of Appeals in *People* v *Bland,* 52 Mich App 649 (1974) stated at 656:

> "It is well established that a convicted criminal has a right to medical treatment while in prison and that denial of such treatment violates the Eighth Amendment protections against cruel and unusual punishment. *Blanks* v *Cunningham,* 409 F2d 220 (CA 4, 1969); *Hirons* v *Director, Patuxent Institution,* 351 F2d 613 (CA 4, 1965); *Coleman* v *Johnston,* 247 F2d 273 (CA 7, 1957). Furthermore, the state owes an even higher duty of care to those incarcerated in its jails who have not as yet been tried. *Hamilton* v *Love,* 328 F Supp 1182, 1191-1194 (ED Ark, 1971)."

Section 4 of RS 1846, Ch 171 as amended, MCLA 801.4; MSA 28.1724 provides as follows:

> "All charges and expenses of safe-keeping and maintaining convicts, and of persons charged with offenses, and committed for examination or trial, to the county jail, shall be paid from the county treasury; the accounts therefor being first settled and allowed by the board of supervisors."

Section 5 of said act gives the County Board of Commissioners statutory authority to contract for medical care for prisoners.

Thus it is clear that, in general, a county must provide adequate medical care for inmates of the county jail.

There are, however, certain exceptions to this general rule.

Federal Prisoners

Section 1 of the above act provides in part:

> ". . . that all persons detained or committed to such jails by the

> authority of the courts of the United States, or any officer of the United States, shall be received in said county jails only in cases where the cost of the care and maintenance of such persons shall be paid by the United States, at actual cost thereof, to be fixed and determined by the Michigan welfare commission upon application of the sheriffs of the respective counties of this state, and not otherwise."

In OAG, 1926-1928, p 743, my predecessor concluded that payment by the United States of the cost of maintenance, of medical care and treatment of federal prisoners, which has been determined by the State Welfare Commission, may be made a condition of the acceptance of such prisoners in county jails. The duties and powers of the State Welfare Commission have since been transferred to the Director of the Michigan Department of Social Services.

While Section 1 of RS 1846, Ch 171 specifies that federal prisoners shall be received in county jails only where the United States bears the cost of care and maintenance, Section 1 of RS 1846, Ch 148 as amended; MCLA 801.101; MSA 28.1751 apparently requires the sheriffs of the several counties to receive and keep prisoners committed by virtue of any civil process issued by any United States court of record. I am of the opinion, nevertheless, that the receiving of federal prisoners, whether committed by virtue of civil process or of criminal process, ought properly to be the subject of a contractual arrangement with the appropriate federal authorities, and that such contract should provide that the cost of care and maintenance, including medical care, shall be borne by the United States.

Prisoners from another county

Section 7 of RS 1846, Ch 148 as amended; MCLA 801.107; MSA 28.1757 provides, under certain circumstances, for the designation of the jail of one county to be used for the confinement of prisoners of another county. Under such circumstances, I am of the opinion that the cost of care and maintenance, including medical care, of the prisoners of one county held in the jail of another county, ought to be paid by the county which has committed such prisoners, and not by the county where such jail is physically located.

Fugitives being transported through state

Section 11 of the Uniform Criminal Extradition Act, 1937 PA 144; MCLA 780.11; MSA 28.1285(11) reads in part as follows:

> "The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.
>
> The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such

> a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping."

I am of the opinion that the expense of keeping such prisoners would include the cost of any necessary medical care provided, and that such cost is chargeable to the officer or agent in whose custody the prisoner is being transported.

Prisoners held for violations of city, village or township ordinances within the jurisdition of a District Court of the third class.

In OAG, 1965-1966, No. 4509, p 392 (Dec 27, 1966) it was concluded that the expense of confining prisoners in the county jail charged with or convicted of violating city or village ordinances must be met by the city or village. I see no reason why this rule should not apply to persons held in the county jail charged with or convicted of violating a township ordinance.

Since the date of that Opinion, however, the legislature has enacted 274 PA 1969; MCLA 801.4a; MSA 28.1724(1), which added to the County Jails Act the following provision:

> "All charges and expenses of safekeeping and maintaining persons in the county jail charged with violations of city, village or township ordinances shall be paid from the county treasury if a district court of the first or second class has jurisdiction of the offense."

Having in mind the above statutory language and my previous Opinion in this regard, I conclude that the expenses, including medical expenses, of confining in the county jails those persons held for violations of city, village, or township ordinances should be paid by the city, village or township if a district court of the third class has jurisdiction of the offense, and by the county if the offense is within the jurisdiction of a district court of the first or second class.

2. If the County is responsible, does this mean the County must provide and pay for any and all medical treatment requested or only emergency needs of the inmate?

While it is clear that the county need not provide medical care in every case in which it is requested, it is also clear that something more than emergency care is required. *Fitzke, supra.* It would be difficult to provide any hard and fast rule, and each request would have to be individually evaluated, taking into consideration the nature and severity of the illness or injury, and the length of time for which the inmate has been committed to the jail.

3. If the County does provide and pay for medical treatment of a jail inmate, can the County seek reimbursement from the individual?

I have found no statute which would authorize a county to seek reimbursement from a county jail inmate for the cost of providing medical care to such inmate.

Section 3 of 60 PA 1962; MCLA 801.253; MSA 28.1747(3), which provides that a prisoner of a county jail who is gainfully employed outside the jail is liable for the cost of his board, is not applicable since the term board, as used in this Act, is clearly limited to meals, and would not include the cost of any medical care provided.

4. What effect does direct relief and Medicaid have on the situation? In other words, if the individual in question qualifies for Medicaid can the County seek reimbursement from Medicaid?

Section 106 of 1939 PA 280 as amended (MCLA 400.106; MSA 16.490(16)) defines medical indigency as that term is used in determining eligibility for medical assistance under Title XIX of the Federal Social Security Act, 42 USC 1396 *et seq*, commonly known as Medicaid. A careful reading of that section reveals that an inmate of a county jail does not fall within the definition of medically indigent, and therefore would not be eligible for medical assistance under Medicaid.

5. If an inmate becomes sick or is injured while an inmate in the County Jail, is the County responsible for medical expenses incurred after the individual is discharged from the custody of the jail? Also, if the individual is treated in the jail for a pre-existing illness, is the County responsible for medical expenses incurred after he is discharged from the custody of the jail?

It is my opinion that a county is responsible for providing medical care to county jail inmates only during the period such persons are actually incarcerated. The county is not responsible for providing continued medical care after the inmate is discharged from custody, regardless of whether the illness or injury pre-existed or arose during the period of incarceration.

6. If the sheriff has custody of a fugitive is the County responsible for medical expenses incurred by said fugitive? If the County is responsible, can the County seek reimbursement from the out-of-state municipality?

Article 4, § 2 of the United States Constitution confers power on the federal government to regulate the interstate rendition of alleged fugitives. The current federal statute implementing this section is 62 Stat 822 (1948), 18 USC 3181, *et seq*. Although the federal constitutional and statutory provisions are intended to be dominant and controlling, *Innes* v *Tobin*, 240 US 127, 36 S Ct 290, 60 LEd 562 (1916), the majority of states have also enacted legislation ancillary to and in aid of such provisions.

The federal statute provides in part:

> "All costs or expenses incurred in any extradition proceeding in apprehending, securing, and transmitting a fugitive shall be paid by the demanding authority . . ." 18 USC 3195

Furthermore, a number of states have adopted statutes making provision for the allocation of costs in extradition cases. In Michigan the pertinent

clause in Section 23 of the Uniform Criminal Extradition Act, 1937 PA 144 as amended; MCLA 780.23; MSA 28.1285(23), which reads as follows:

> "In all extradition cases the expenses therefor shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the state on whose governor the requisition is made, and all other necessary and reasonable expenses in returning such prisoner."

It is my opinion that such statutes permit a county to seek reimbursement from the demanding authority for necessary medical expenses incurred in apprehending and returning a fugitive. However, I am informed that, as a matter of comity, it is the common practice in nearly every state, including Michigan, to make no charge for the costs involved in apprehending and keeping fugitives from other jurisdictions, pending their return to the demanding state.

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MOTOR VEHICLES: License revocation

LICENSES AND PERMITS: Motor vehicles

ADMINISTRATIVE LAW AND PROCEDURE: Standards

A statutory standard authorizing the Secretary of State to cite a driver to appear for driver re-examination when the Secretary of State has reason to believe that the licensed driver is incompetent to drive a motor vehicle is not constitutionally infirm.

Opinion No. 4943 February 26, 1976.

Mr. James C. Thompson
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You have raised the follwing question concerning a provision of the Michigan Vehicle Code, 1949 PA 300; MCLA 257.1 *et seq;* MSA 9.1801 *et seq*:

> "This is to request your opinion as to the constitutionality of M.C.L.A. § 257.320 (a); MSA 9.2020(1) [sic, 9.2020(a)], which in pertinent part reads : 'When the secretary of state has reason to believe that any licensed operator or chauffeur: (1) is incompetent to drive a motor vehicle *or* is afflicted with mental or physical infirmities or disabilities rendering it unsafe for that person to drive a motor vehicle . . . . the secretary of state . . . . may suspend or revoke the license . . . . of that person.'