S T A T E O F T E N N E S S E E
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Opinion No. 03-072

Cost of Medical Services Incurred in Jail as Condition of Probation

QUESTION

Whether a county may include medical expenses incurred on behalf of an inmate as jail fees taxable in the bill of costs such that reimbursement can be a condition of probation?

OPINION

As a general rule a county may include medical expenses incurred on behalf of an inmate as jailers' fees. However, a criminal defendant may not have his probation revoked through a violation warrant for failing to pay costs assessed in a criminal action.

ANALYSIS

In Op. Tenn. Atty. Gen. 01-118 (July 26, 2001) this Office opined that a county which has provided medical services to an inmate of its county jail would not be entitled to restitution for those expenses as a condition of probation pursuant to Tenn. Code Ann. §40-35-304. You inquire whether a county may include medical expenses incurred on behalf of an inmate as jail fees taxable in the bill of costs such that reimbursement can be a condition of probation pursuant to Tenn. Code Ann. §40-35-303(d).

A defendant convicted of a criminal offense is responsible for paying the costs associated with the prosecution. Tenn.Code.Ann.§ § 40-25-104 and 123. The costs of a criminal case include all costs incident to the arrest and safekeeping of the defendant including the costs of the jailer. Tenn.Code.Ann. §§ 40-25-104 and 133. Costs incurred by a county in providing an inmate with needed medical or dental care are costs incident to the inmate's safekeeping. Counties have an obligation to provide medical care for inmates in their facilities. Tenn. Code Ann. §41-4-115(a).

If a county has established a per diem jailers' fee inclusive of medical care, medical expenses cannot be added to jailers' fees in individual cases as that would provide double compensation for the same costs. Similarly, if reimbursement for medical expenses has already been received from another source,

those expenses cannot be added to the jailers' fees. *See, e.g.*, Tenn. Code Ann. §41-4-115(f).

A criminal defendant may not have his probation revoked through a violation warrant for failing to pay costs assessed in a criminal action. Op. Tenn. Atty. Gen. 00-162 (October 18, 2000). Tenn. Code Ann. §40-24-105(a) provides that costs "shall not be deemed part of the penalty, and no person shall be imprisoned...in default of payment of costs...." Instead, costs may be collected in the same manner as a judgment in a civil action.

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