S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

September 20, 2012

Opinion No. 12-88

Secondary Transportation Agents for Persons with Mental Health Disabilities

---

QUESTIONS

1. When a person assessed, diagnosed, screened, or evaluated as having a mental illness or serious emotional disturbance is initially transported on an emergency basis to the place of examination by a municipal law enforcement agency, can the county sheriff designate the municipal law enforcement agency as a secondary transportation agent for further transportation purposes under Tenn. Code Ann. § 33-6-901?

2. If the answer to Question 1 is yes, can the municipal law enforcement agency refuse to accept the appointment as secondary transportation agent?

3. If the municipal law enforcement agency accepts the appointment or is not permitted by law to refuse the appointment, which agency is financially responsible for the costs of the initial transportation and subsequent transportation of the person–the county sheriff or the appointed municipal law enforcement agency?

4. If a municipal law enforcement agency has accepted its appointment as secondary transportation agent, can it bill the county for its costs in transporting the person, and, if so, on what basis are those costs established?

OPINIONS

1. Yes. Under Tenn. Code Ann. § 33-6-901, the sheriff may designate a municipal law enforcement agency as a secondary transportation agency. This authority includes the sheriff designating the municipal law enforcement agency that initially transported the person on an emergency basis to the place of examination as the secondary transportation agent for further transportation purposes.

2. No. A municipal law enforcement agency may not lawfully refuse to accept the appointment as secondary transportation agent.

3-4. Under Tenn. Code Ann. § 33-6-901(b), the sheriff or secondary transportation agent may only directly bill the initial transporting county for "out-of-county" transports. All other transports are apparently funded by the sheriff or secondary transportation agent's annual budget. Any transportation costs that can be directly billed should include the cost of the fuel, labor and overhead incurred in making the transport.

ANALYSIS

There are three separate phases of transportation that might occur under Tenn. Code Ann. § 33-6-901: transporting persons to obtain an examination of their mental status, transporting persons certified in need of inpatient care to a hospital or treatment resource, and any transportation necessary after the person receives treatment. The person(s) responsible for transportation varies depending on the phase of transportation.

Responsibility for the first phase of transportation–transporting persons to obtain an examination of their mental status–may lie with any law enforcement officer. Tenn. Code Ann. §§ 33-6-401 and 33-6-402 provide that any officer authorized to make arrests in Tennessee may detain and transport for examination and treatment persons who pose an immediate substantial likelihood of serious harm due to mental illness.[1] A person subject to such detention may be taken into custody without a civil order or warrant by a law enforcement officer authorized to make arrests in Tennessee, by a physician, by a doctoral level psychologist, or by certain other designated medical professionals. Tenn. Code Ann. § 33-6-402. A law enforcement officer may transport persons in custody pursuant to these provisions to a physician, doctoral level psychologist, or certain other designated medical professionals for immediate examination and certification for care and treatment. Tenn. Code Ann. § 33-6-404.

The second phase of transportation occurs when a person has been certified in need of inpatient care and treatment and must be transported to a hospital or treatment resource for admission. If, after evaluation, a person is determined to be in need of admission to a hospital, Tenn. Code Ann. § 33-6-404(3)(B)(iii) provides that:

> the physician, psychologist, or designated professional shall assess the person's clinical needs and need for physical restraint or vehicle security and determine the mode of transportation to the hospital in consultation with the mandatory pre-screening agent, other mental health professional familiar with the person, or a knowledgeable family member.

The sheriff must transport all persons for involuntary admission to inpatient care except for those transported by a secondary transportation agent, a municipal law enforcement agency designated by the sheriff, or anyone else authorized to transport such persons. Tenn. Code Ann. § 33-6-901(a). The sheriff is authorized to "designate a secondary transportation agent or agents for the county for persons with mental illness or serious emotional disturbance whom a physician or mandatory prescreening authority has evaluated and determined do not require physical restraint or vehicle security." *Id*. *See also* Tenn. Code Ann. § 33-6-406. In addition, whenever an individual is about to be involuntarily admitted for inpatient care in a hospital or treatment resource, the court is responsible for arranging for the transportation of the person to the hospital. Tenn. Code Ann. § 33-6-902(a).

The third phase of transportation occurs after the person has been transported to the

[1] Tennessee law authorizes several categories of law enforcement officers to make arrests. Initially, a law enforcement officer may make an arrest with or without a warrant. Tenn. Code Ann. § 40-7-101. The sheriff, any officer acting as the sheriff, the sheriff's deputies, the marshal, or a city or town police officer may execute an arrest warrant. Tenn. Code Ann. § 40-6-210. Peace officers may also make an arrest for certain infractions committed in their presence. Tenn. Code Ann. §§ 38-3-102, 38-3-108, and 40-7-103.

hospital or treatment resource where the person is proposed to be admitted. In counties with populations of 600,000 or less according to the 1970 federal census or any subsequent federal census, the sheriff or transportation agent is required to remain at the hospital or treatment resource long enough for the person to be evaluated for admission, but not longer than one hour and 45 minutes. Tenn. Code Ann. § 33-6-406(b)(3). After that time period has passed, the person becomes the responsibility of the evaluating hospital or treatment resource, and the sheriff or transportation agent may leave. *Id.* In counties with populations of 600,000 or more according to the 1970 federal census or any subsequent federal census, the sheriff is relieved of further transportation duties after the person has been delivered to the hospital or treatment resource. At this point, further transportation of the person becomes the responsibility of the personnel of the hospital or treatment resource. Tenn. Code Ann. §§ 33-6-406(b)(4) and 33-6-407(d).[2]

1-2. The statutory process codified at Tenn. Code Ann. § 33-6-901 permits the sheriff, as the primary transporting agent, to designate a qualified municipal law enforcement agency as a secondary transportation agent to transport "persons with mental illness or serious emotional disturbance whom a physician or mandatory prescreening authority has evaluated and determined do not require physical restraint or vehicle security." Tenn. Code Ann. § 33-6-901(a)(2). Thus a designated secondary transportation agent could include a municipal law enforcement agency that had initially transported the person on an emergency basis to the place of examination. *Id.* The only limitations on the sheriff's exercise of authority to designate a municipal law enforcement agency in the sheriff's county as a secondary transportation agent are contained in Tenn. Code Ann. § 33-6-901(a)(2), which states:

> The sheriff shall take into account in designating a secondary transportation agent or a municipal law enforcement agency both its funding and the characteristics of the person who will be transported. The sheriff shall consult with the county mayor before designating a secondary transportation agent.

The authorizing statute does not make any provision for the municipal law enforcement agency to refuse or decline the sheriff's designation, and no other statutory provision appears to grant any such privilege to the agency designated. Therefore, the municipal law enforcement agency cannot lawfully refuse to accept the appointment as secondary transportation agent. *See Powers v. State*, 343 S.W.3d 36, 44 (Tenn. 2011) (quoting *In re C.K.G.*, 173 S.W.3d 714, 722 (Tenn. 2005)) (stating that, when a statute is plain and unambiguous, a court is required to "apply its plain meaning without complicating the task").

3-4. The sheriff or secondary transportation agent, including any municipal law enforcement agency so designated by the sheriff, "may bill the initial transporting county for transportation costs" *if* the person is transported to a hospital or treatment resource in a county other than the initial transporting county. Tenn. Code Ann. § 33-6-901(b). The initial transporting county is "the county in which the person is initially transported by the sheriff or secondary transportation agent," and that county remains responsible "for the remainder of such person's transportation requirements." *Id.* These provisions collectively evidence a legislative intent to place any costs of transport that occur after the initial transport to a county outside the

[2] Davidson and Shelby counties are the only counties in Tennessee with populations of 600,000 or more that come within this population bracket. *See* Tenn. Code Ann., Vol. 13, County Population Figures with Ranges, at 257-60 (2011 Supp.).

initial transporting county on the initial transporting county and to allow the sheriff or secondary transportation agent to directly bill the initial transporting county for transports outside the county.

However, these provisions do not allow the sheriff or the secondary transportation agent to bill for the initial transport, or any subsequent transport that is within the boundaries of the county itself. The costs of these transports are presumably covered by these entities' annual budgets. The failure to include reimbursement for these transports implies that the General Assembly did not intend to allow the sheriff or the secondary transportation agent to bill for these "in county" transports. *See Harman v. University of Tennessee*, 353 S.W.3d 734, 739 (Tenn. 2011) (stating the rule of statutory construction that the mention of one subject in a statute signifies the exclusion of other unmentioned subjects). This interpretation is reinforced by the statute's requirement that the sheriff must take into account an entity's budget and consult the county mayor before designating an entity, including a municipal law enforcement agency, as a secondary transportation agent, factors which indicate that not all transports by the secondary transportation agent will be directly reimbursed by the initial transporting county. Otherwise there would be no need for the sheriff to consider the impact such transports would have on a potential secondary transportation agent's budget. *See Tidwell v. Servomation–Willoughby Co.*, 483 S.W.2d 98, 100 (Tenn. 1972) (quoting *Anderson, Fish and Oyster Co. v. Olds*, 197 Tenn. 604, 607-08, 277 S.W.2d 344, 345 (1955)) (stating that a statute must be construed as a whole, and that a court "should and will assume the legislature used each word in a statute purposely and the use of these words conveyed some intent and had a meaning and a purpose").

For those "out-of-county" transports where the sheriff or a secondary transportation agent may bill the initial transporting county for a transport, the term "transportation costs" as used in Tenn. Code Ann. § 33-6-901(b) is not defined. In such a case, courts would look to dictionary definitions, such as Black's Law Dictionary, to determine the meaning of this statutory term. *Carter v. Bell*, 279 S.W.3d 560, 570 (Tenn. 2009); *State v. Edmondson*, 231 S.W.3d 925, 928 (Tenn. 2007). Black's Law Dictionary defines costs as "[t]he amount paid or charged for something" and "direct costs" as "[t]he amount of money for material, labor and overhead to produce a product." Black's Law Dictionary at 371-72 (8th ed. 2004). Accordingly the transportation costs billed by a municipal law enforcement agency to the initial transporting county should include the cost of the fuel, labor and overhead incurred in making the transport. *See generally* Tenn. Code Ann. § 8-21-901(a)(3)(D) (defining the per-mile fee a sheriff may charge for transporting prisoners to a mental health facility for evaluation).

ROBERT E. COOPER, JR.
Attorney General and Reporter

WILLIAM E. YOUNG
Solicitor General

RACHEL JRADE-RICE
Assistant Attorney General

Requested by:

The Honorable Steve Southerland
Deputy Speaker
State Senate
10 Legislative Plaza
Nashville, TN 37243

The Honorable Don Miller
State Representative
113 War Memorial Building
Nashville, TN 37243