



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

December 20, 1962

Honorable Richard E. Rudeloff
County Attorney
Bee County
Beeville, Texas

Opinion No. WW-1509

Re: Whether the Commissioners' Court may authorize the payment of expenses incurred in the psychiatric examination of an indigent prisoner charged with a felony, for the purposes stated.

Dear Mr. Rudeloff:

You have requested an opinion from this office upon the following questions:

"(1.) May the Commissioners Court of Bee County authorize the payment of expenses to be incurred in the psychiatric examination of an indigent prisoner charged with a felony to determine whether or not such prisoner was sane at the time of the commission of the alleged offense and whether or not he is sane at this time?"

"(2.) Is the Sheriff of Bee County authorized to incur bills, in behalf of the county, for psychiatric examinations of an indigent prisoner charged with a felony to determine whether or not such prisoner was sane at the time of the commission of the alleged offense and whether or not he is sane at this time?"

In regard to the above-quoted questions you have set forth the following facts:

". . . The attorney for the defendant has filed a motion with the court, along with a supporting affidavit of a local physician, raising the issue of insanity. Such motion requested an order that the defendant be submitted to a private psychiatrist in San Antonio, Texas for mental examination to determine whether the defendant

was sane or insane at the time of the commission of the offense and whether he is sane or insane at this time. There is no psychiatric or neurological facilities available locally. The estimated costs of such examination is \$500.00.

"The 36th Judicial District Court of Bee County, the court in which such indictment is pending, has granted such motion and has issued its order authorizing the Sheriff of Bee County to transport the defendant to such psychiatrist in San Antonio, Texas and to such other place or places as such doctor may direct for the purpose of making such mental examination."

In a later letter you have also set forth certain additional facts to the effect that:

"On November 24th the District Judge in whose court such prisoner's case is pending issued an order whereby he found that the patient is 'mentally disturbed and violent,' and that there is no adequate facility for safekeeping him in jail in Bee County. The Court ordered the prisoner to be transferred to the Bexar County jail until further ordered by the Court."

Article 1037, Vernon's Code of Criminal Procedure, provides that:

"Each county shall be liable for all expense incurred on account of the safe keeping of prisoners confined in jail or kept under guard, except prisoners brought from another county for safe keeping, or on habeas corpus or change of venue; in which cases, the county from which the prisoner is brought shall be liable for the expense of his safe keeping."

Article 1040, Vernon's Code of Criminal Procedure, provides in part that:

"For the safe keeping, support and maintenance of prisoners confined in jail or under guard, the sheriff shall be allowed the following charges:

". . .

"3. For necessary medical bill and reasonable extra compensation for attention to a prisoner during sickness, such an amount as the commissioners court of the county where the prisoner is confined may determine to be just and proper."

In the case of Bush v. State, 353 S.W.2d 859 (Crim. App. 1962), the Court stated that:

"The Constitution of Texas, Art. 1, Sec. 15-a, Vernon's Ann.St., relates to the commitment of one found to be insane. It does not relate to insanity as a bar to prosecution or as a defense in a criminal case. A defendant in a criminal case may successfully plead insanity as a bar to prosecution or punishment, or as a defense, though the evidence may not be such as would authorize his commitment.

"We find no provision in the constitution or statutes which requires a court to appoint a psychiatrist for one charged with a crime or order that he be sent to a hospital for observation. In Ellzey v. State, 158 Tex.Cr.R.604, 259 S.W.2d 211, this Court held that the law of this State does not require a trial court to send a person charged with an offense, prior to an adjudication of insanity, to an institution for diagnosis or observation. The prior adjudication of insanity of appellant, in the lunacy proceeding, would not require such an order. We find no error in the court's refusal."

Upon motion for rehearing the Court, in Bush v. State, supra, further stated that:

"In a highly professional brief and oral argument, appellant urges that we were in error in our original holding that he was not under the Constitution of the United States entitled to the appointment of a psychiatrist, to be compensated by the State for his examination of appellant and for his time while testifying, in the event he concluded that appellant was a person of unsound mind. This Court does not turn a deaf ear to appellant's claims of his constitutional rights, as will be seen from our opinion in which we granted relief to him in Ex

parte Bush, 166 Tex. Cr. R. 259, 313 S.W.2d 287. But we are not inclined to extend the holding of the Supreme Court of the United States in United States ex rel. Smith v. Baldi, 344 U.S. 561, 73 S.Ct. 391, 97 L.Ed. 549, when that Court said 'We cannot say that the State has that duty by constitutional mandate.'

In a prior opinion by this office, Attorney General's Opinion No. R-2474 (1951), it was held that:

" . . . this office expressly held in Att'y Gen. Op. O-4708 (1942) that a County is liable under the provisions of Articles 1037 and 1040, V.C.C.P., for the necessary and reasonable medical expenses of a prisoner during illness when the prisoner is confined in jail or under guard. The reasonableness, as well as the just and proper amount of the charges for such medical treatment is a matter to be determined by the Commissioners Court." (Emphasis added)

Attorney General's Opinion No. R-2474 (1951) further states that:

" . . . Of course, it is for the Commissioners Court to determine the reasonableness of the claim presented, and the Court may pay only such amount as it determines to be just and proper."

In view of the language of Articles 1037 and 1040, Bush v. State, supra, and Attorney General's Opinion R-2474 (1951), we are of the opinion that the Commissioners' Court is charged with the responsibility, by statute, of determining the necessity and reasonableness of medical care and treatment rendered to prisoners confined in jail or under guard during sickness. However, we are of the further opinion that the medical care and treatment provided for in Article 1037 and 1040 is that medical care and treatment necessary to protect and preserve the health and well-being of the prisoner, and would not include mere medical examination to determine the sanity or insanity of a prisoner whereby the prisoner would have available evidence to be used as a defensive issue in regard to the crime for which he is charged.

Insofar as the Commissioners' Court has the responsibility of passing upon the necessity and reasonableness of any medical care or treatment rendered a prisoner confined in

jail or under guard, the Sheriff can only bind the county for such medical expenses as are deemed necessary, just and proper by the Commissioners' Court.

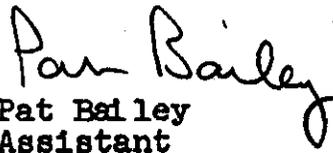
SUMMARY

The Commissioners' Court has the responsibility of determining the necessity and reasonableness of medical care and treatment rendered prisoners confined in jail or under guard pursuant to Articles 1037 and 1040, Vernon's Code of Criminal Procedure. The Commissioners' Court may authorize the payment of expenses to be incurred in the psychiatric examination and treatment of an indigent prisoner if said Court determines that such examination and treatment is necessary to protect and preserve the health and well-being of the prisoner, but this would not include medical or psychiatric examination merely to determine the sanity or insanity of a prisoner whereby the prisoner would have available evidence to be used as a defensive issue in regard to the crime for which he is charged.

The Sheriff can only bind the county for such medical expenses, for a prisoner in jail or under guard, as are deemed necessary, just and proper by the Commissioners' Court.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
Pat Bailey
Assistant

PB:wb:zt

APPROVED:
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