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Municipalities:

4 M.R.S.A. §173(4)

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May 26., 1978

Honorable Richard H. Pierce
Senate Chamber
State House
Augusta, Maine 04333

Re: Reimbursement by Counties of Municipalities
for Expenses Incurred by Municipal Police
Officers in Transporting Persons to Correctional
or Mental Health Institutions

Dear Senator Pierce:

This letter responds to your letter of April 5, 1978, requesting an opinion of this office as to whether a municipality is entitled to reimbursement from the county for the salary of a municipal police officer or constable who transports a person to a correctional or mental health institution.

The statutory provision which governs the reimbursement of municipalities by counties for the transportation of prisoners¹ is the second paragraph of 4 M.R.S.A. §173(4) (1977 Supp.),² which provides as follows:

1. The word "prisoners" is used here in its broadest sense and is intended to embrace, inter alios, persons who have been committed to a mental institution pursuant to a verdict of not guilty by reason of mental disease or defect and persons who have been adjudicated juvenile offenders. This opinion is not, however, intended to apply to persons taken into protective custody or admitted to a hospital pursuant to 34 M.R.S.A. §2332-A et. seq.

2. Prior to its repeal by P.L. 1977, c. 114, §34, 34 M.R.S.A. §138 addressed the reimbursement of municipalities by counties for the transportation of prisoners in specifically enumerated instances.

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"Municipalities shall be reimbursed by the county for all reasonable expenses incurred by police officers and constables for travel within the State between their employing municipality and any other place within the State when such travel is as a consequence of an arrest, or for the purpose of making an arrest on a criminal warrant or to commit and transport a person to any jail or institution within the State, such expenses to be calculated at the state mileage rate for the travel of such officers and constables to and from their employing municipality."

The statute authorizes reimbursement for "all reasonable expenses incurred by police officers and constables for travel". (Emphasis added). Wages and salaries ordinarily are not a concomitant of travel, but constitute an expense incurred by the employer wholly unrelated to whether the employee is engaged in travel. "Travel expenses", as that term is commonly used, encompasses payment for costs over and above salary such as mileage, tolls, meals and lodging.³ Moreover, the fact that the subject statute authorizes reimbursement for expenses incurred by officers, rather than expenses incurred by the municipality, for the transportation of prisoners suggests that salary, which is not an expense incurred by officers, was not to be reimbursed.

Therefore, it is the opinion of this office that the salaries of police officers and constables who transport prisoners to jails or other institutions do not constitute "travel expenses" as that term is used in the second paragraph of 4 M.R.S.A. §173(4) and consequently need not be paid to municipalities by counties. This

3. It might be argued that the final clause of the pertinent statute ("... such expenses to be calculated at the state mileage rate for the travel of such officers and constables to and from their employing municipality.") manifests an intent to limit reimbursement to mileage. However, the preceding statutory reference to reimbursement for "all reasonable [travel] expenses" (emphasis added) indicates that the final clause, which was added by P.L. 1967, c. 244, was intended solely to provide a standard for the determination of an expense for which receipts cannot be obtained.

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result would obtain regardless of whether the prisoner is transported during the regular working hours of the officer. If the Legislature had intended to distinguish between on-duty and off-duty officers for purposes of salary reimbursement, it presumably would have done so expressly. Compare 16 M.R.S.A. §252 (1977 Supp.).

Sincerely,



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Assistant Attorney General

MDS/sbh