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OPINION	:	No. 79-503
of	:	July 26, 1979
GEORGE DEUKMEJIAN Attorney General	:	
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SUBJECT: DETAINING COSTS—Pursuant to Penal Code section 4016.5, the Department of Corrections is required to reimburse a county for the "costs" of detaining an alleged parole violator in county jail to the extent that such "costs" are directly attributable to such detention.

Norma Phillips Lammers, Executive Officer, Board of Corrections, has requested an opinion on the following question:

To what extent, if any, are the salaries, wages and related benefits of county jail staff reimbursable pursuant to Penal Code section 4016.5, which requires the Department of Corrections to reimburse the county for the "costs" of detaining an alleged parole violator in county jail?

CONCLUSION

Pursuant to Penal Code section 4016.5, the Department of Corrections is required to reimburse a county for the salaries, wages and related benefits of jail staff as costs of detaining alleged parole violators in county jail to the extent that such salaries, wages, and

related benefits represent expenses reasonably allocable and directly attributable to such detention.

ANALYSIS

A person on parole from state prison is in the legal custody of the Department of Corrections. (Pen. Code, § 3056.) If his parole is suspended, cancelled, or revoked, a parolee may be apprehended and placed in the county jail for a reasonable time pending his return to the state prison. (39 Ops. Cal. Atty. Gen. 301, 302 (1962).) If a person (including a parolee) is committed to county jail because he is charged with a crime or has been convicted of a crime and committed there, the expenses incurred are a county charge. (Gov. Code, § 29602; see 39 Ops. Cal. Atty. Gen. 302, *supra*.) However, where a parolee is detained in county jail solely because of an alleged parole violation and not as a result of a new criminal charge, Penal Code section 4016.5 provides for reimbursement to the county of the costs of detention by the Department of Corrections. That section states:

> "When an alleged parole violator is detained in a county jail pursuant to an order of the Adult Authority under the authority granted by Section 3060 of the Penal Code, or pursuant to an order of the Governor under the authority granted by Section 3062, or pursuant to a valid exercise of a state parole officer's peace officer powers as specified in Section 830.5 of the Penal Code when such detention relates to violation of the conditions of parole and not a new criminal charge, the county shall be reimbursed for the costs of such detention by the Department of Corrections. Such reimbursement shall be expended for maintenance, upkeep, and improvement of jail conditions, facilities, and services. Before the county is reimbursed by the department, the total amount of all charges against that county authorized by law for services rendered by the department shall be first deducted from the gross amount of reimbursement authorized by this section. Such net reimbursement shall be calculated and paid monthly by the department. The department shall withhold all or part of such net reimbursement to a county whose jail facility or facilities do not conform to minimum standards for local detention facilities as authorized by Section 6030 of the Penal Code."[1]

In 1976, our office issued an opinion, 59 Ops. Cal. Atty. Gen. 260 (1976), construing this section (which was at that time numbered section 4016, see Stats. 1976, ch. 1079, § 57), in which we concluded:

[1] The Community Release Board is now performing the functions of the Adult Authority which has been abolished. (Pen. Code, § 5078.)

> "Section [4016.5] of the Penal Code requires the Department of Corrections to reimburse a county only for those *added costs* which are incurred by the county when an alleged parole violator is detained in the county jail. The Department of Corrections is not required to reimburse a county for expenses which were not *added as the result* of that detention." (Emphasis added.)

The specific issue in that opinion concerned whether the Department of Corrections could properly refuse to reimburse counties for "indirect" expenses of jail operation such as depreciation of the facility and auditing, budgeting and accounting done by the county. We concluded these expenses were not reimbursable and that the Department's interpretation of the code section was correct. At that time the Department did permit the counties to include in the "Daily Rate" charged for detaining a parolee a proportionate share of jail staff salaries, wages and related benefits. (See *Manual on Parole Detention Under Section 4016 of the Penal Code* (September 1975).)

On January 20, 1978, the Department of Finance issued Fiscal Management Audits Management Letter DC-84 to the Director of Corrections in which, as a result of an audit and on the basis of our opinion in 59 Ops. Cal. Atty. Gen. 260, the Department of Finance concluded that salaries, wages and related benefits of jail staff were not reimbursable costs of detention unless the county could show specifically additional staff were budgeted for and used during the period of the parolee detention. Consequently, the Department of Corrections issued the revised *Manual on Parolee Detention Under Section 4016.5 of the Penal Code* (April 1979) which excluded salaries, wages and related benefits of jail staff as costs which could be included in establishing a "Daily Rate" to be charged per parolee.

The Board of Corrections believes this exclusion of a portion of staff salaries, wages and related benefits from allowable costs comprising a "Daily Rate" is an incorrect application of Penal Code section 4016.5 and results in an inequitable situation. The Board's position is put forth in a January 23, 1979 letter from the Board's Chairman to the Director of Finance, which states the following:

> "Penal Code Section 4016.5 establishes the circumstances under which the state reimburses the counties 'costs' for housing parolees, less any deductions for non-compliance with minimum jail standards. An Attorney General's Opinion, No. CV 75/355, [59 Ops. Cal. Atty. Gen. 260] concludes that only 'added' costs may be reimbursed. The Department of Finance's interpretation of this is that salaries and benefits of correctional personnel should be excluded from the 'added' costs definition. Since salaries comprise the major part of service agencies' budgets, the repayment schedule under

this restrictive interpretation will have major impact on the counties. In Management Letter DC-84, dated January 20, 1978, the Department of Finance identifies areas in which reimbursement savings could be achieved. These 'savings' would reduce reimbursements by 96.9%, to $47,521 from $1,549,521. We believe that such a policy would be incorrect and destructive to the counties.

"The problem is most clearly demonstrated in the larger counties where substantial numbers of parolees are being held in pretrial [sic] status. In Los Angeles County where 100–150 parolees may be housed at any given point, we could project that, were it not for these individuals, staff would not need to be hired for one housing module and other supportive services could be reduced accordingly. While the effect in smaller jurisdictions is less dramatic, the principle is certainly operative. It seems evident to us that salaries and benefits should be included in the cost basis.

"This more restrictive interpretation will mean that counties will receive some $3 to 4 per day for parolee housing as opposed to a range of $15 to 25 per day under presently utilized policy. We note with some irony that, when county prisoners are housed in state facilities, the state charges the counties $28 per day, a figure based on fixed as well as added costs. This inconsistency further illustrates the inequity inherent in this interpretation."[2]

We conclude that the Departments of Finance and Corrections have incorrectly interpreted Penal Code section 4016.5 to exclude in all cases any reimbursement for jail staff salaries, wages and related benefits. We conclude that such costs are reimbursable to the extent they represent county expenses *reasonably allocable and directly attributable* to the detention of parolees. These expenses need not be specifically traceable to particular staff members added as a result of parolee detentions. We have also concluded our use of the term added costs" in 59 Ops. Cal. Atty. Gen. 260, *supra*, by implication, suggested an unnecessary requirement for reimbursement of costs pursuant to Penal Code section 4016.5. To the extent that opinion implies that "the cost of such detention" reimbursable under Penal Code section 4016.5 requires establishing more than that the cost claimed is *a reasonably allocable* portion of jail expenses which are *directly attributable* to parolee detentions, it is disapproved.

[2] We have been advised that the Chairman's use of the term "pretrial status" in the second paragraph quoted above was not intended to refer to parolees detained on new charges. The numerical estimate represents parolees detained on parole holds only.

Our conclusion in 59 Ops. Cal. Atty. Gen. 260, *supra*, that "costs" in Penal Code section 4016.5 means "added costs" was based substantially on a prior opinion, 53 Ops. Cal. Atty. Gen. 180 (1970). In that opinion we concluded that the word "costs" in Penal Code section 4700 which requires the Department of Corrections to reimburse the county or city for "all costs incurred" for, among other things, investigation, preparation and trial of an inmate for a crime committed in state prison meant "added costs" attributable to the proceedings, but did not include "a blanket percentage of county governmental costs." (Emphasis added.) (53 Ops. Cal. Atty. Gen. at 182.) However, in the same opinion we did state that the portion of the time spent by the district attorney or the public defender on the trial and added county costs for furnishing heat and light to the courtroom would be examples of proper "added costs."

We pointed out in 53 Ops. Cal. Atty. Gen., *supra*, at 182, that the principle of "added costs" was earlier expressed in 22 Ops. Cal. Atty. Gen. 209 (1953). In that opinion we concluded that a city need not reimburse a county under Government Code section 36903 for the expenses of maintaining a city prisoner in a county jail where the city prisoner was charged also with a violation of state law. Noting that the cost of detention of persons charged with a violation of a state law is a county cost (Gov. Code, § 29602), we reasoned as follows:

> "Recovery from the city for maintaining prisoners in the county jail is for the purpose of reimbursing the county for its out of pocket expenditure. Where the prisoner is also lodged in the county jail for violating state law, the county has not been put to any expense. It would in any event be required to hold the prisoner on the other charge. That the prisoner has also violated the city ordinance does not *add* to the cost of his confinement. The county has suffered no loss nor been put to any expense by virtue of the fact that there is an *additional charge* against the prisoner it is holding and there is no basis for reimbursement." (22 Ops. Cal. Atty. Gen., *supra*, at 212.) (Emphasis added.)

However, in that opinion we did not discuss what costs were recoverable in cases where city prisoners were detained on city charges only. The concept of "added costs" as discussed in that opinion is already incorporated into the express language of Penal Code section 4016.5. Reimbursement is allowed only for the costs of detention of parolees who are held on parole holds alone and not as a result of new criminal charges. Thus, that opinion does not support any conclusion as to which costs are reimbursable pursuant to section 4016.5.

In 56 Ops. Cal. Atty. Gen. 141 (1973) we had occasion to decide whether the salaries of San Francisco police officers who were assigned to provide security for a state prison

escape trial were reimbursable by the Director of Finance pursuant to Penal Code section 4700.2. That section permits reimbursement to counties for the costs of trials in cases where the charge involves an escape by a prisoner from the custody of the Department of Corrections. The term "all costs" in the section is expressly defined to include but not to be "limited to, salaries and expenses incurred by the district attorney in investigation and prosecution, by the sheriff in investigation and custody, by the public defender or court-appointed attorney in investigation and defense, witness fees and expenses, reporter fees, transcription costs, necessary courtroom security reasonably required to protect the court and participants, and other direct costs.

In concluding the salaries of the police officers were "added costs" reimbursable under that section, we pointed out that the word "added" as used in 53 Ops. Cal. Atty. Gen. 180, *supra*, in effect meant "reasonably allocable and directly attributable." (56 Ops. Cal. Atty. Gen., *supra*, at 143.)

We believe the gist of our opinion in 59 Ops. Cal. Atty. Gen. 260, *supra*, is that "costs" as used in Penal Code section 4016.5 means expenses directly attributable and reasonably allocable to the detention of the parolees as opposed to a proportional share of general county governmental expenses.

The Legislature has set forth various methods whereby one custodial authority is reimbursed for housing inmates in the constructive custody of another authority. The Department of Corrections charges a daily rate for housing county jail inmates in state facilities. However, the statutes authorizing such housing permit the Department to establish the rate of compensation charged (see, e.g., Pen. Code, § 4007), or permit a reimbursement charge for the "costs" of such confinement to be determined contractually. (See, e.g., Pen. Code, § 2903.) Similarly, by contract the Department may charge a fixed rate to house prisoners from other state and federal jurisdictions. (Pen. Code, § 2902.) The Department by contract may also house state inmates in county jails or federal facilities. (Pen. Code, §§ 2910, 2911.) The charges in such cases are also expressly contractual. Penal Code section 4124 permits a county board of supervisors to determine "a rate to be charged for the care of city prisoners [in a county industrial farm or road camp], which rate shall not exceed the *average cost to the county of caring for one prisoner per day*." (Emphasis added.) Thus, there does not appear to be a fixed concept of reimbursable costs for detention of prisoners from another jurisdiction.

A basic rule of statutory construction is "to accord words their usual, ordinary, and common sense meaning based on the language the Legislature used and the evident purpose for which the statute was adopted." (*In re Rojas* (1979) 23 Cal. 3d 152, 155.)

The legislature in Penal Code section 4016.5 used the word "costs," not "*added* costs." Our prior opinions introduced the term "added costs" and, as has been shown, we used it therein not to mean "additional expenses," but to mean "reasonably allocable and directly attributable expenses." We believe that a common sense definition of the word "costs," which would serve the evident purpose for which Penal Code section 4016.5 was adopted, is "expenses which are reasonably allocable and directly attributable" to the detention of the parolees. Lest we again fall victim to the same semantic trap we set with our use of the word 'added," we will endeavor to define the terms "reasonably allocable" and "directly attributable."

By "directly attributable," we mean there must be an immediate connection between the reimbursable function and the expense incurred. Thus, for purposes of Penal Code section 4016.5, expenses incurred in the maintenance and operation of the jail, including related staff salaries, wages and benefits, would be directly attributable costs. On the other hand, expenses incurred in the maintenance and operation of other departments of the sheriff's office, general county governmental expenses or expenditures for capital improvements would not be directly attributable costs.

The term "reasonably allocable" means that in addition to an immediate connection between the reimbursable function and the expense, there must be a rational way of determining that a particular proportion of the expense is related to that function. In the case of reimbursement under Penal Code section 4016.5, a proportion of the *time* of jail staff could be reasonably allocable to the detention of parolees. In the case of supplies, a proportion of the *amount* expended could be reasonably allocable to the detention of parolees.

We cannot list every conceivable allowable cost within the meaning of Penal Code section 4016.5. The examples of proportionate shares of related salaries and utility expenses which we used first in 53 Ops. Cal. Atty. Gen. 180, *supra*, and repeated in 59 Ops. Cal. Atty. Gen. 260, *supra*, demonstrated the types of allowable costs.

The concept of "added costs" in the context of Penal Code section 4016.5 is inappropriate. "Costs" within the meaning of that section include all expenses reasonably allocable and directly attributable to the detention of the alleged parole violators who are not detained on new criminal charges.

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