

DEPARTMENT OF Statute placing general supervision over care
CORRECTIONS: of inmates implies the responsibility to fur-
DENTAL CARE nish dental care.
TO INMATES:



May 31, 1956

Honorable E. V. Nash
Warden
Missouri State Penitentiary
Jefferson City, Missouri

Dear Mr. Nash:

Your May 1 request for an official opinion from this office was stated as follows:

"This office requests your opinion on the following:

"a. MRS-Cumulative Supplement-1955-Section 216.255, paragraph 1:

Duties of physician--

(1) Attend at all times the necessities of the sick inmates, whether they are in the hospitals, in cells or elsewhere, and bestow on them all necessary medical services.

"(1) Under this section is the Department of Corrections, State Penitentiary, also responsible for the proper dental care necessary to the health of the inmate?

"(2) Is the Department of Corrections, State Penitentiary, obligated to pay the total cost incurred for such dental care as is necessary for the health of the inmate?"

In addition to your questions you submitted a proposal regarding dental payments for our consideration. We deem it unnecessary to repeat the proposal herein in view of our opinion. Succinctly stated, your question is: Are "dental services" included within the meaning of the term "medical services?"

We think, however that it is unnecessary to pass upon that question specifically here. It is our opinion that the responsi-

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bility for dental care devolves upon the State, as a part of its sovereign responsibility, and that such is specifically made the responsibility of the Division of Administration, more by Section 216.215, Cumulative Supplement 1955, than by 216.255.

The latter section specifies the duties of the physician in regard to one phase of the general term "care" as used in Section 216.215. In the event the State is responsible, which seems to be your main question, it is immaterial for the purposes of our opinion whether it is the responsibility of the physician to supervise the furnishing of dental care, or whether it is the duty of someone else. "Care," as used in Section 216.215, is not limited in its meaning.

In the case of *Arnold v. The United States*, C.C.A. (Colo.) 94 Fed. (2d) 499, 505, it is said: "'Care' is defined as to cause to have care; to trouble; to care for; to regard."

In the case of *Kelly v. Jeffries*, 19 Del. 286, 50 Atl. 215, it is said that a legacy for the care of a person is substantially the same as a legacy for his maintenance. The like effect was held in *Christy v. Pulliam*, 17 Ill. 58; *Cabeen v. Gordon*, 1 S.C. Rep. 51.

In the case of *Harlan v. Harlan*, 154 Cal. 341, 98 Pac. 32, it was held that "care", as used in a statute authorizing the court in a divorce action to give directions for the custody, care and education of children is, if not synonymous with "maintenance," a broader term, and when combined with custody and education (in our statute it is combined with "discipline") it includes every element of provision for the physical, moral and mental well-being of the children. The court further held that an order for the benefit of the children is within the jurisdiction of the court whether it uses the term "maintenance and support" or the broader expression "custody, care and education."

Certainly, there can be no argument about the State's "custody" of prisoners; "custody" meaning having "charge," "control," "possession." The statute places general supervision over such "custody" in the hands of the Division of Administration also.

As shown above, and as is generally understood in the use, the word "care," one having the "care" of an object or of an individual, has the responsibility for the safeguarding, safe-keeping, maintenance, general protection and preservation of

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such object or individual. Naturally, as it pertains to an individual it involves the maintenance and general protection of the individual's health.

Since the State is liable for the "care" of prisoners our statute enjoins the general supervision over it upon the Division of Administration. If there were no responsibility for the care there would be no mention of the supervision over it.

Further, the care necessary under a given situation is a matter of degree. You ask about the "responsibility" for the proper dental care "necessary" to the "health" of the inmates. With dental care in addition to that we are not herein concerned.

CONCLUSION

It is, therefore, the opinion of this office that:

(1) Under Section 216.215, 1955 Cumulative Supplement, Revised Statutes of Missouri, wherein the Division of Administration is given the general supervision over the custody, care and discipline of all inmates, the Division of Administration is responsible for "the proper dental care necessary to the health of the inmate," and

(2) That under the same provisions the division is "obligated to pay the total cost incurred for such dental care as is necessary for the health of the inmate."

The foregoing opinion, which I hereby approve, was prepared by my assistant, Russell S. Noblet.

Very truly yours

John M. Dalton
Attorney General

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