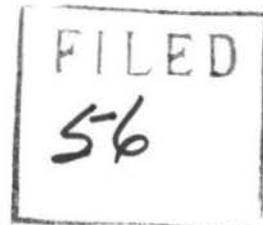


May 12, 1971

OPINION LETTER NO. 56  
Answer by Letter - Klaffenbach

Mr. Howard L. McFadden  
General Counsel  
State Department of  
Corrections  
131 East High Street  
Jefferson City, Missouri 65101



Dear Mr. McFadden:

This letter is in answer to your opinion request in which you ask whether the Department of Corrections is required to furnish prosthetic devices for inmates.

We are enclosing our Opinion No. 66, dated May 31, 1956, to the Honorable E. V. Nash, relating to dental care, which is informative although not completely dispositive of the instant question.

In our view Section 216.215, RSMo 1969 which places the care of such persons in the Division of Administration of the Department of Corrections authorizes the department to furnish such necessary devices.

We base this conclusion of our interpretation of the word "care" as used in this section which we believe must be broad enough to meet changing standards. That is the scope of "care" and of the "medical services" rendered under Section 216.255, RSMo 1969 must meet the demands of present constitutional construction. The deprivation of such devices as artificial limbs, hearing aids, glasses, crutches, and the like might support a claim of cruel and inhuman punishment.

Mr. Howard L. McFadden

With respect to the changing construction of the Eighth Amendment to the United States Constitution, the district court stated in Austin v. Harris, 226 F.Supp. 304 (W.D.Mo. 1964) at l.c.308:

"...But it is now established that, apart from historical precedent, what constitutes cruel and unusual punishment within the prohibition of the Eighth Amendment is to be judged in the light of developing civilization, so that what might not have been cruel and unusual yesterday may well be so today. Weems v. United States, 217 U.S. 349, 30 S.Ct. 544, 54 L.Ed. 793."

Having concluded that the furnishing of such devices is authorized it further follows that whether or not such devices must be furnished in particular cases is to be determined by the prison authorities. In our view the holdings with respect to medical care generally apply here. Prison medical officials have wide discretion in treating prisoners. However, failure or refusal to provide medical services may violate the Fourteenth Amendment. Riley v. Rhay, 407 F.2d 496 (9th Cir. 1969); Schack v. Florida, 391 F.2d 593 (5th Cir. 1968). See also the extensive analysis of Judge Becker in Ramsey v. Ciccone, 310 F.Supp. 600 (W.D.Mo. 1970).

Recent state court decisions such as that of the Supreme Court of Montana in Petition of Gregg, 392 P.2d 87 (1964) have also recognized that in certain instances prison authorities may be required to furnish devices such as hearing aids and eye glasses but whether or not they must do so depends on the circumstances of the particular case.

Very truly yours,

JOHN C. DANFORTH  
Attorney General

Enclosure:

Op. No. 66  
5-31-56, Nash