

Opinion No. 73-52

July 13, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable Raymond G. Sanchez New Mexico State Representative Chairman,
Local Government Needs Committee 806 Bank of New Mexico Building Albuquerque,
New Mexico 87101

QUESTIONS

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1. When can an intoxicated person be transported to jail under the Detoxification Act (Chapter 331, N.M. Laws 1973)?
2. Can a municipality be liable to a health care facility for the cost of shelter and treatment provided by the health care facility to an intoxicated person transported to the facility by a peace officer or public service officer of the municipality?
3. Can an intoxicated person held in protective custody under the Act be considered to be charged with a misdemeanor or a petty misdemeanor?

CONCLUSIONS

1. See Analysis.
2. No, see Analysis.
3. No, see Analysis.

OPINION

{*104} ANALYSIS

1. The effect and intent of the Detoxification Act, Chapter 331, N.M. Laws 1973, is to provide aid and assistance to persons who have become so intoxicated in a public place that they are disorderly or have become unable to care for their own safety. Further, the Detoxification Act specifically prohibits the practice of arresting and charging an intoxicated person apprehended in a public place with any crime. It should be noted, however, that the Detoxification Act will not apply with respect to any other separate offense which has been committed by the intoxicated person. For instance, if an intoxicated person has become involved in a brawl, is disturbing the peace or driving while intoxicated, the intoxicated person can be arrested and charged with those

offenses because they are separate offenses but he **may not** be arrested or charged with public intoxication or drunkenness.

The alternatives a peace officer or public service officer has at his disposal when he has an intoxicated person in his custody who was apprehended in a public place are to transport that person to his home or residence; transport the intoxicated person to the nearest health care facility within the county; or transport the intoxicated person to the city or county jail and hold him in protective custody. Each of these alternatives should be discussed as to procedure.

Peace officers and public service officers should transport an intoxicated person to his residence when it is feasible and when it appears that the intoxicated person ". . . will thereby become orderly and able to care for his own safety." Chapter 331, Section 3 (A), N.M. Laws 1973.

When an intoxicated person is unable to care for his own safety or is in need of medical attention, he should not be taken to his residence but should be transported to the nearest health care facility within the county.

Alcoholic "half-way houses" or any other alcohol treatment center should be considered, in addition to hospitals, as health care facilities because an intoxicated person need only be unable to care for his own safety and not necessarily in need of medical attention.

An intoxicated person may be transported to jail in three instances:

1. When he has no residence in the county in which he is apprehended;
2. When he is in need of medical attention or is unable to care for his own safety and health care facilities are not available or
3. When he will be a danger to others if not transported to jail.

{*105} The wording of the Detoxification Act is inadequate in respect to what procedure should be followed when an intoxicated person is in need of medical attention or is unable to care for his own safety and health care facilities are not available. The only explicit provision in the Act relating to the transportation of intoxicated persons in need of medical attention who are unable to care for their own safety is Section 3B which provides that "a person in need of medical attention" may be transported to the "nearest health care facility within the county."

Section 7A, however, provides that an intoxicated person held in protective custody in jail "shall be transported to a health care facility as soon as treatment becomes available." It is implicit in this provision that an intoxicated person in need of medical attention may be transported to jail when treatment is not presently available at a health

care facility "as soon as treatment becomes available" could arise unless an intoxicated person in need of medical attention had previously been transported to jail.

Section 7A presents some problems in interpretation because it is ambiguous and in conflict with Section 3B. Section 7A now provides that an intoxicated person "shall be transported to a health care facility as soon as treatment becomes available or as soon as he becomes able to care for his own safety and **treatment is apparently no longer needed.**" The latter portion of this provision is in conflict with Section 3B which states that an intoxicated person may be transported to a health care facility in two situations: (1) when the person is "unable to care for his own safety," or (2) is "in need of medical attention."

In **State v. Nance**, 77 N.M. 39, 419 P.2d 742 (1966), our Supreme Court held:

". . . Where the language of the legislative act is doubtful or in adherence to the literal use of the words would lead to injustice, absurdity or **contradiction**, the statute will be **construed according to its obvious spirit or reason**, even though this requires the rejection of words or the substitution of others. *State v. Southern Pacific Co.*, 34 N.M. 306, 281 P.29; *Janney v. Fullroe*, 47 N.M. 423, 144 P.2d 145." (Emphasis added).

In order to effectuate the obvious intent of the statute and to prevent the absurdity of requiring the transportation of persons able to care for their own safety and not in need of medical treatment to a health care facility, Section 7A should be "construed according to its obvious spirit or reason" which would mean, in effect, that an intoxicated person held in protective custody under Section 7A would be transported to a health care facility as soon as treatment became available or would be released from jail as soon as he was able to care for his own safety and treatment was apparently no longer needed.

Section 7A is, therefore, interpreted as allowing the transportation of an intoxicated person in need of medical attention to jail when treatment at a health care facility is not "available." Treatment may not be "available" when, for instance, the health care facility is either full or refuses treatment because of some policy of the facility.

2. Section 6 of the Detoxification Act states that the intoxicated person having shelter or treatment furnished to him under the Act, shall be liable to the furnishing ". . . health care or other facility, for its reasonable costs . . ." The Detoxification Act expressly contemplates that the costs of shelter or treatment are to be borne by the intoxicated person and no provision is made for any municipal liability to a health care facility. Therefore, a municipality cannot be held liable to a health care facility for the cost of shelter and treatment provided to an intoxicated person by the health care facility.

3. Section 7B provides that an intoxicated person held in protective custody under the Act shall not be considered to have been arrested or charged with any crime. Section 40A-1-4, N.M.S.A., 1953 Comp. defines "crime" as "an act or omission forbidden by law and for which, upon conviction, a sentence of either death, imprisonment, or fine is authorized." Section 40A-1-5, N.M.S.A., 1953 Comp., classified crimes as "felonies,

misdemeanors and petty {*106} misdemeanors." Thus, the Criminal Code makes it clear that "crime" under the Detoxification Act includes misdemeanors and petty misdemeanors.

Any municipal ordinance which imposed a criminal sanction on public intoxication, pursuant to Section 14-17-14, N.M.S.A., 1953 Comp., would be inconsistent with Section 7B and therefore void. Section 14-17-14, **supra**, provides in pertinent part:

"A municipality may by ordinance: * * *

"C. Prohibit and suppress: * * *

"(3) Public intoxication . . ."

The relevant provision of Section 14-16-1, N.M.S.A., 1953 Comp. states:

"The governing body of a municipality may adopt ordinances or resolutions not inconsistent with the laws of New Mexico for the purpose of:

"A. Effecting or discharging the powers and duties conferred by law upon the municipality * * *"