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BRUCE E. BABBITT
ATTORNEY GENERAL

June 3, 1975

Honorable J. Michael Flournoy
Coconino County Attorney
P. O. Box 1237
Flagstaff, Arizona 86001

Attention: Mr. Ronald L. Challis
Deputy County Attorney

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ARIZONA ATTORNEY GENERAL

Dear Mr. Flournoy:

Your letter of April 24, 1973 and the attached letter from Mr. Al Heinze of the Northern Arizona Council of Governments pose four questions involving Arizona Revised Statutes, Title 36, Chapter 18, Article 2 which was added during the 1972 legislative session. (Chapter 162, Laws 1972). Your letter poses the following questions:

1. With whom does the legal responsibility for establishing and financing local alcoholism reception centers lie?

This office has previously held that the responsibility for establishing and financing LARCS is a statewide commitment. See Department of Law Opinion 74-3, dated December 31, 1973.

2. Is a peace officer placed in the position of making a medical diagnosis in light of the terminology used in the law?

A.R.S. § 36-2026.B provides that a peace officer may transport a person to a LARC whom he may have reasonable cause to believe is intoxicated. Just as when arresting a person for one of the alcohol related crimes, a peace officer needs to make his own assessment of the person's condition. If it appears to him that the person is intoxicated or incapacitated by alcohol, he may take him to a LARC for evaluation. Although peace officers are frequently in a position to assess the condition of ill people, such as victims of an accident or a heart attack, etc., and frequently provide protective custody, emergency assistance and, perhaps, transportation to those who appear in need of medical care, an assessment by a peace officer for such purposes should not be regarded as equivalent to a medical diagnosis or an "evaluation" as defined in § 36-2021. A.R.S. § 36-2030 is designed to protect peace officers as well as others from criminal or civil

liability in the event of a good faith but erroneous judgment.

3. What are the alternatives a peace officer may pursue when there is no available LARC?

In the absence of a LARC, the peace officer's department head or other policy-making body should provide instruction as to what assistance to give persons intoxicated or incapacitated by alcohol. If the peace officer believes acute care is needed, he should take the person, or arrange to have him taken, to a hospital emergency room or some other place where appropriate medical resources are available. It is, of course, well recognized that peace officers often provide assistance to persons when they have no legal duty to do so. The nature and extent of their availability for such assistance depends upon instructions received from their policy-making supervisors as well as upon the priority of other activities in which they may be engaged.

4. Who is liable for the cost of evaluation and treatment of persons under Chapter 162, Laws 1972?

A.R.S. § 36-2028 provides in part that:

A. A patient being treated by an approved treatment facility or the estate of the patient, or a person obligated to provide the cost of the evaluation and treatment and having sufficient financial ability is liable to the approved treatment facility for the cost of evaluation and treatment of the patient in accordance with the rates established by the department. [Emphasis supplied]

A.R.S. § 1-215 "Definitions" provides:

In the statutes and laws of the State, unless the context otherwise requires:

. . . .

24. "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person When the word "person" is used to designate the party whose property may be subject of a criminal or public offense, the term includes the United States, this state, or any territory, state or country, or any political subdivision of this state which may lawfully own any

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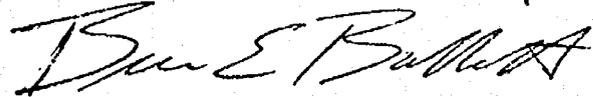
property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership or any association of persons.

Thus, a governmental agency having responsibility for the health needs of the intoxicated or incapacitated person or alcoholic because he is an indigent would be liable for the cost of his evaluation or treatment under A.R.S. § 11-291. A.R.S. § 36-2027.E provides that if an indigent patient is evaluated pursuant to court order, the cost shall be borne by the political subdivision of which the court is a part.

A non-indigent would be liable for the cost of his treatment or care, even though his admission was non-voluntary, unless some other person were obligated to pay for such services, such as the parent of a minor child.

Finally, as noted earlier, A.R.S. § 36-2030 provides that peace officers and others who in good faith act in compliance with the article shall not be criminally or civilly liable. Accordingly, neither the police officer nor his employer would be liable for the cost of evaluation and treatment on the basis that he, or it, was responsible for bringing the patient to the facility except in cases where he did not act in good faith.

Sincerely,



BRUCE E. BABBITT
Attorney General

Enclosure
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