

49 Op. Att'y Gen. No. 10

CORRECTIONAL FACILITIES - Grant funding for housing Indian youth in regional detention facilities pursuant to Tribal Court order;
COUNTIES - Inclusion of Indian youth in funding base for Board of Crime Control grants for housing youthful offenders in regional detention facilities;
COURTS - Housing Indian youth in regional detention facility;
INDIANS - Housing Indian youth in regional detention facility;
JUVENILES - Housing Indian youth in regional detention facility;
YOUTH COURT ACT - Housing Indian youth in regional detention facility;
ADMINISTRATIVE RULES OF MONTANA - Rules 23.15.601 to 23.15.607;
MONTANA CODE ANNOTATED - Sections 41-5-1801 to -1807, -1803, (2)(e), (g), (4), -1804, -1901 to -1908;
UNITED STATES CODE - Title 18, section 1152.

HELD:

The Montana Board of Crime Control may reimburse counties for detention costs for Indian youth placed in a regional youth detention facility pursuant to an order of a tribal court.

October 18, 2001

Mr. Jim Oppedahl
Executive Director
Montana Board of Crime Control
P.O. Box 201408
Helena, MT 59620-1408

Dear Mr. Oppedahl:

You have asked my opinion on the following question:

May the Montana Board of Crime Control make reimbursements to counties for Indian youth who are placed in a regional youth detention facility by a tribal court?

For the reasons that follow, I conclude that the MBCC may, indeed must, reimburse counties for youth detention services provided to tribal youth adjudicated pursuant to a tribal court order and placed in a regional juvenile detention facility.

As you have noted, the Montana Board of Crime Control ("MBCC") provides state grants to counties for regional youth detention services pursuant to Mont. Code Ann. §§ 41-5-1901 to -1908 and Mont. Admin. R. 23.15.601 to 23.15.607. Counties are required to provide youth detention services to assure that youth are not detained with adults, and to assure that detained youth are provided with the needed educational programs during their detention. Mont. Code Ann. § 41-5-1803. To fulfill their obligations, counties may enter into contracts and interlocal agreements with other counties to establish regional detention facilities, contract with other governmental entities, including Indian tribes, to use a secure detention facility, and contract with school districts to provide for the education of youths detained in the facilities. Mont. Code Ann. §§ 41-5-1803(2)(e), (g), (4), -1804. The legislation contemplates the counties working together as regions to coordinate the provision of these services and construction and operation of the necessary detention facilities. Such cooperation is intended to assure that the best possible services are provided to Montana youth, and to maximize scarce resources by coordinating and combining resources to provide those services. Mont. Code Ann. §§ 41-5-1801 to -1807. The MBCC provides grant money to the counties and regions, to assist in paying for the services under the grant program established at Mont. Code Ann. §§ 41-5-1901 to -1908. Counties in Montana have combined to create the regions as contemplated in the statutes.

The region in issue is the North Central region, as that is the region of which Blaine County is a member. As a member of the North Central region, Blaine County submits a budget to the region. The region in turn submitted a grant application to MBCC, which included the Blaine County budget for partial reimbursement from the MBCC. Most of the Fort Belknap Reservation lies within Blaine County. The County and the Tribe have contracted to allow detention in the Blaine County facility of youth determined to be in need of detention by a tribal court. The minutes of a meeting of representatives of the North Central region of April 23, 2001, which were included within the 2001 year grant application, reflect that Blaine County included the tribal youth population in its population survey of youth to be served. Such inclusion may be required by federal law, since the tribal member youth are Montana citizens and therefore entitled to be offered the state services in the same manner as any other Montana youth. The fact that a tribal court adjudicates the youth does not disqualify those youth from receipt of state services, if the youth are otherwise similarly situated and entitled to the service. Pursuant to federal law, Tribes have exclusive jurisdiction over the domestic relations of its members. Fisher v. District Court, 424 U.S. 382 (1976); Williams v. Lee, 358 U.S. 217 (1959); In re Marriage of Skillen, 1998 MT 43, 44, 287 Mont. 399, 956 P.2d 1; State ex rel. Iron Bear v. District Court, 162 Mont. 335, 512 P.2d 1292 (1973). Under federal law, the tribes also have exclusive jurisdiction to prosecute for criminal misdemeanor violations where the defendant or the victim is an Indian and the criminal acts occur on a reservation. 18 U.S.C. § 1152. Thus, tribal courts have jurisdiction over tribal member youth. However, those youth remain citizens of Montana as well as citizens of the tribes, and if the tribe does not provide similar services for the youth, they are appropriately covered in a county's grant application. Here, those youth are included in Blaine County's population projection.

A question has arisen about the proper funding for these youth, given that the language in the current statutes does not appear to contemplate that MBCC may grant money directly to the Tribe, but rather indicates that the grant recipients are limited to counties through their regions. Mont. Code Ann. § 41-5-1902. Blaine County has entered into an agreement with the Tribes to provide the service. Nothing in state law prevents the MBCC from reimbursing Blaine County for services it renders to these youth. The State-Tribal Cooperative Agreements Act, Mont. Code Ann. §§ 18-11-101 to -112, includes broad authority for counties to enter into agreements with tribes for delivery of services to their citizens. In this case, the grant application submitted by Blaine County includes the population numbers of tribal youth expected to be served. When the county applies for reimbursement for each youth served, regardless of whether the youth is a tribal member or not, the MBCC is required to reimburse for the tribal youth served in the same manner as for other youth served.

THEREFORE, IT IS MY OPINION:

The Montana Board of Crime Control may reimburse counties for detention costs for Indian youth placed in a regional youth detention facility pursuant to an order of a tribal court.

Very truly yours,

MIKE McGRATH
Attorney General

mm/sab/dm