

June 26, 2002

The Honorable Common Council
Finance and Personnel Committee
City of Milwaukee

Dear Committee Members:

Re: Milwaukee County House of Correction Per Diem Rate

The purpose of this letter is to provide you with updated information regarding our audits of per diem fees charged by Milwaukee County for City ordinance violators held at the County House of Correction.

Over the past 11 years, our audits of County billings to the City for care-of-prisoner services have resulted in a net reduction in City payments to Milwaukee County of over \$1,600,000 or nearly \$150,000 savings annually. For 2001, the audit concluded that the correct reimbursement rate for care of prisoner services was \$7.71. This compares to the \$14.05 rate billed by Milwaukee County. Based on the Comptroller audited rates as approved by the City Attorney, the City paid Milwaukee County \$128,690, saving \$134,467 compared to the \$263,157 billed by Milwaukee County.

The per diem fee is established by ordinance of the County Board as authorized by Chapter 303.18(2) of the Wisconsin Statutes. This fee is intended to recover the actual and reasonable costs of maintenance of prisoners in the House of Correction. The County determines the per diem rate for a particular year by dividing the out-of-pocket costs for prisoner care in the previous year by the total prisoner days in that year.

A Wisconsin Supreme Court case came about in 1964 when the City and County both appealed a Milwaukee Circuit Court decision related to the City's refusal to pay for prisoner care in 1962, claiming that the City had been overcharged in the years 1956 through 1961. The County had been charging a per diem rate based on the full accounting cost of operating the County Jail and the House of Correction. The Wisconsin Supreme Court ruled that only direct out-of-pocket costs of prisoner care could be included in the per diem rate. The Court also ruled that the City was entitled to recover its overpayments for the years 1956 through 1961.

Our first audit concerning charges for City prisoners at the County House of Correction was published in 1991. The audit concluded that the County's calculation of the per diem rate included charges for items specifically disallowed by the Wisconsin Supreme Court decision. As a result, following the review of our audit results by the City Attorney's Office, we reduced the payment to Milwaukee County to an amount consistent with the State Supreme Court ruling. Periodically, our Office has conducted such an audit of the County's billing and similarly reduced the amount paid.

Milwaukee County recomputes the House of Correction per diem rate annually. We have performed seven follow-up audits of the per diem rate since 1991. Each audit found that Milwaukee County's computation of the per diem rate included charges specifically disallowed by the Wisconsin Supreme Court decision. Each audit computed a per diem rate in accordance with the Court decision. The Office of the City Attorney has reviewed each audit's rate calculation and has agreed with the Comptroller's proposed reimbursement rate for every year audited. The City Attorney has then advised the Office of the Comptroller to pay for prisoner boarding days at the per diem rate calculated by the Comptroller audit.

In addition to the per diem rate for the boarding of prisoners, the City also pays the County a commitment fee of \$5.00 for the first commitment and \$2.50 for each additional commitment against the same party and a \$6.00 fee for each prisoner's transportation to and from the House of Correction. This is in accordance with the terms of a 1981 agreement between the City and the County. Contrary to the terms of this agreement, the County has been billing the City a fee of \$30.00 for each commitment.

For the last several years, the Office of the City Attorney has been meeting with representatives of Milwaukee County in an attempt to resolve the dispute regarding payments for City prisoners in the County House of Correction. No agreement has yet been reached.

If you have any questions about this matter, please feel free to contact me or Mr. Michael J. Daun, Director of Financial Services, at 286-2304.

Very truly yours,

W. MARTIN MORICS
Comptroller

WMM:WDE
Ref: WP-4462
cc: Mayor John O. Norquist
Laura Engan