

**Matter of New York State Commn. of Correction
v Reilly**

2008 NY Slip Op 30395(U)

January 23, 2008

Supreme Court, Nassau County

Docket Number: 3074-07/

Judge: F. Dana Winslow

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SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. F. DANA WINSLOW,

**Justice
TRIAL/IAS, PART 7
NASSAU COUNTY**

In the matter of the Application of

**THE NEW YORK STATE COMMISSION
OF CORRECTION,**

Petitioner,

**RETURN DATE: 9/24/07
SEQUENCE NO.: 001**

**For a Judgment under section 46(4)
of the Correction Law and Article 78
of the Civil Practice Law and Rules**

- against -

INDEX NO.: 003074-07

**EDWARD REILLY, Individually and
in his capacity of Sheriff of
Nassau County, New York,
THOMAS R. SUOZZI, Individually and
in his capacity of County Executive of
Nassau County, New York,
JUDITH A. JACOBS, Individually and
in her capacity of Presiding Officer of
the Nassau County Legislature, and
THE COUNTY OF NASSAU,**

Respondents.

The following papers read on this petition (numbered 1-4)

Notice of Petition.....1
Petition.....2
Verified Answer.....3
Affidavit in Opposition.....4
Memorandum of Law in Opposition to Petition.....A
Memorandum of Law.....B

**Upon the foregoing papers, and upon the conference held in chambers on
September 24, 2007, the petition for a judgment pursuant to Correction Law §46(4) and
Article 78 of the Civil Practice Law and Rules directing the respondents to cease**

charging or collecting incarceration costs from inmates or former inmates of the Nassau County Correctional Center, is determined as follows.

Title 21 and Title 21-A of the Miscellaneous Laws of Nassau County (“Titles 21 and 21-A”), effective as of October 26, 1992 and November 25, 1996, respectively, authorize THE COUNTY OF NASSAU (hereinafter, together with the individually named respondents, the “COUNTY”) to collect reimbursement for “incarceration costs” from certain inmates or former inmates of the Nassau County Correctional Center. “Incarceration costs” are defined as the actual costs incurred by the Sheriff’s Department in connection with housing such inmates, including, but not limited to, room, board, medical expenses and educational expenses. Pursuant to Titles 21 and 21-A, the Sheriff’s Department charges a *per diem* fee to inmates who do not qualify as indigent.

By directive dated September 19, 2006 (the “Directive”) and pursuant to **Correction Law §46(4)**, petitioner THE NEW YORK STATE COMMISSION OF CORRECTION (the “COMMISSION”) notified the COUNTY that the collection of incarceration costs pursuant to Titles 21 and 21-A violated sections **500-h** and **500-n** of the **Correction Law**. The Directive further ordered the COUNTY to cease and refrain from charging or collecting such costs and to submit to the COMMISSION documentary proof of compliance by October 19, 2006.

Sheriff EDWARD REILLY sent two letters, dated October 5, 2006 and October 19, 2006, respectively, requesting that the COMMISSION reconsider its Directive, based upon the COUNTY’s view that Titles 21 and 21-A did not violate either section of the Correction Law. The COMMISSION denied reconsideration. The COUNTY’s non-compliance with the Directive prompted the instant petition.

The question presented is whether or not the COUNTY’s practice of charging fees to inmates for reimbursement of incarceration costs violates State law. The COUNTY concedes that any charge to inmates for food or medical or dental care is prohibited by Sections **500-d** and **500-h** of the **Correction Law**. The COUNTY maintains, however, that the fee charged to inmates is a nominal *per diem* charge analogous to an administrative fee, which does not include the costs of food or medical or dental care. [Letter of EDWARD REILLY dated October 5, 2006, attached as Exhibit C to the Petition.] Amounting to \$40 per day, the fee covers only 22.9% of the actual cost of housing an inmate, exclusive of the costs of food, medical and dental care. [Affidavit of Warren Vandewater, Director of Budget and Finance for the Nassau County Sheriff’s Department, sworn to on April 4, 2007.]

Accepting the foregoing assertions as true, for purposes of discussion, the question remains whether the COUNTY may lawfully charge inmates for other costs of incarceration, such as housing, education or administration. The applicable section of New York State Correction Law provides as follows:

§500-n. Prisoners; unlawful fees prohibited

1. Except as otherwise provided by law, a sheriff or other person in charge of a correctional facility or any person employed at such facility shall not charge a prisoner or other person in custody with any sum of money, or demand or receive from him money or any valuable thing for any drink, food or other thing furnished or provided for such prisoner or person at any correctional facility.
2. A sheriff or other public officer or employee shall not demand or receive from a prisoner or other person, while in his custody, a gratuity or reward, upon any pretense or for any purpose.
3. A sheriff, or other public officer or employee, shall not demand or receive from a prisoner or other person in custody, money or any valuable thing for rent in a jail or any fee, compensation, or reward for the commitment, detaining in custody, release, or discharge of a prisoner, other than the fees expressly allowed therefor by law.

Determination of this question rests on two separate but interrelated inquiries: (1) What is the scope and intent of **Correction Law §550-n**? Is it limited, as the COUNTY argues, to prohibiting private, ad hoc arrangements between correction officials and individuals in their custody (in the nature of extortion or bribery)? Or does it broadly prohibit the imposition of any reimbursement charges by local officials, even if formally promulgated and uniformly applicable to all prisoners? (2) What is the significance of the language “[e]xcept as otherwise provided by law” in **Section 500-n(1)** and “other than the fees expressly allowed therefor by law” in **Section 500-n(3)**? Does “law” mean State law only, as the COMMISSION maintains? Or, as the County argues, do the exceptions encompass local law as well, signifying that the State did *not* intend to preclude charges authorized by local legislation.

“A ‘law’ is a rule of civil conduct prescribed by the law-making power of the State. Expressions such as ‘required by law,’ ‘regulated by law,’ ‘allowed by law,’ ‘made by law,’ ‘limited by law,’ ‘as prescribed by law,’ ‘created by law’ and ‘a law of the state,’ as used in the statutes refer exclusively to the statute law of the State unless, by the purposes of the statute where the words are used, a broader signification is required.” **Board of Education of Union Free School District No. 6 of Town of Greenburgh v. Town of Greenburgh**, 277 NY 193 (citations omitted); **Corradetti v. Dale Used Cars**, 102 AD2d 272.

The COUNTY argues that the purposes of the instant statute require a “broader signification.” Based upon the language of the section itself, as well as its interplay with other sections of the statute, the COUNTY argues that **Correction Law §500-n** must be construed to prohibit only “unlawful” fees; that is, fees imposed or collected outside the auspices of any duly-enacted law, local or State. First, the language of the heading (“Prisoners; unlawful fees prohibited”) suggests this interpretation. Second, the language of the subsections is addressed only to the conduct of individuals, such as a sheriff, public officer or employee of a correctional facility, and makes no reference to any governmental body. Taking into account the proscription against gratuities in subsection (2), the section as a whole may be read as an initiative against official corruption, not local legislation.

Second, there is no explicit provision that all costs of incarceration must be borne by the COUNTY, or that inmates may not be charged for reimbursement of any such costs. The COUNTY argues that when the State legislature intended to prohibit local governments from charging inmates, it did so explicitly, as in **Correction Law §§ 500-d** (“Prisoners... shall be provided with food, at the expense of the county...”) and **500-h** (“Diagnoses, tests... and care and treatment by a hospital..., or by a physician, or by a dentist ... shall be available without cost or charge to the inmates...”). The absence of a specific prohibition directed at the COUNTY leaves the COUNTY free to recoup its other incarceration costs, such as housing, education, or administration. Reading the statute otherwise, the COUNTY argues, renders **Section 500-n(1)** superfluous, insofar as the prohibition therein is explicitly set forth in **Section 500-d**. It also renders meaningless the exceptions in **Correction Law §500-n(1) and (3)** (“[e]xcept as otherwise provided by law” and “other than the fees expressly allowed therefor by law”).

In the Court’s view, the analysis begins with the proposition that “law” means State law, unless the purpose of the statute requires a broader meaning. **Board of Education v. Greenburgh**, 277 NY193. The cases relied upon by the COUNTY, in which “law” was held to include a local law or Court order, were decided in distinct factual and statutory contexts. *See Corradetti*, 102 AD2d 272; **Friedman v. Valentine**, 266 AD561.

The purpose of **Correction Law §500-n** is not clearly articulated, and the record is devoid of direct evidence of legislative intent. The statutory language, however, is capable of reflecting a more comprehensive purpose than that ascribed by the COUNTY; that is, to prohibit any charges to inmates for the costs of incarceration, except those authorized by the State. According to the COMMISSION, the exceptions in **Correction Law §500-n(1) and (3)** contemplate specific instances in which State law permits the

collection of incarceration costs from inmates, as in the context of a work release program. *See* **Correction Law §872(a)(2)**. As the COMMISSION notes, where the State has allowed counties to collect reimbursement of incarceration costs, it has done so explicitly and established the parameters of such process, including what costs may be reimbursed, from whom, and how the amount is determined. *See* **Correction Law §500-h(2); Correction Law §872(a)(2)**. In the context of work release programs, the statute provides for State oversight of the collection process. *See* **Correction Law §872(a)(2)**.

To give broader significance to the word “law” in the context of **Correction Law §500-n**, the COMMISSION argues, would give local legislatures unfettered license to preempt the State’s prohibition against collecting incarceration-related costs from inmates. This would be inconsistent with the explicit and limited authority granted to local governments as discussed above. Taken to the extreme, it would permit oppressive or absurd results, such as the collection of fees for an inmate’s release.

The Court is persuaded by the COMMISSION’s reasoning, finding no compelling evidence requiring a departure from the general rule that “law,” as used in a statute, refers to State law. Moreover, the Court notes that the opposing interpretations of **Section 500-n** by the COUNTY and the COMMISSION converge at their essence. Narrowly stated, the essential purpose of **Section 500-n** is either to protect inmates from unauthorized fees, as the COUNTY argues, or to protect inmates from fees not authorized by the State, as the COMMISSION argues. The overarching purpose common to both interpretations is to protect inmates. From that perspective, the purpose of **Correction Law §500-n** does not require a broader signification, expanding the exception for fees authorized by law. If anything, a broader signification is inconsistent with the essential purpose of the statute, inasmuch as to broaden the exception is to weaken the protection.

Accordingly, the Court finds that, as used in **Correction Law § 500-n**, the word “law” means State law. The statute prohibits the charging or collecting of fees from inmates for any incarceration-related costs, except as provided by State law. The COUNTY’s current practice violates this prohibition, and the COMMISSION is entitled to an order directing the COUNTY to cease and refrain from such practice.

As a procedural matter, the COUNTY argues that this **Article 78** proceeding is not the proper vehicle in which to challenge the constitutionality of Titles 21 and 21-A. It would be disingenuous to say that the relief sought herein is strictly limited to a prohibition of certain official conduct, and does not implicitly or effectively nullify Titles 21 and 21-A. For reasons articulated by the COMMISSION, however, in its Memorandum of Law dated April 17, 2007, the Court holds that this proceeding is proper pursuant to **Correction Law §46(4)**, which authorizes the COMMISSION to apply for

such relief in the event of a continued violation of law following a COMMISSION directive. That a declaratory judgment action is an alternative means to reach the equivalent outcome does not negate the propriety of the chosen vehicle.

The Court has considered the remaining arguments of the parties and finds them to be without merit.

Based upon the foregoing, it is

ORDERED, that the petition is **granted**, as follows:

1. The COUNTY shall comply with the Directive, and provide the COMMISSION with proof of compliance, within thirty (30) days after service of this Order pursuant to the immediately following paragraph.

2. The COMMISSION shall serve a copy of this Order with Notice of Entry upon the COUNTY within fifteen (15) days of entry.

This constitutes the decision and Order of the Court.

ENTER:

Dated:

1/23/08

[Handwritten Signature]
J.S.C.

ENTERED

FEB 08 2008

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**