

## Opinion No. 13-1141

December 17, 1913

**BY:** H. S. CLANCY, Assistant Attorney General

**TO:** Mr. Thomas J. Guilfoil, Assistant to the Traveling Auditor, State College, New Mexico.

### ACCOUNTS OF COUNTY OFFICIALS.

County treasurer may act as county physician. Assessors to receive commissions on moneys collected, the direct receipts of assessments made prior to Jan. 6, 1912. As to whether county should furnish shoes, clothing and tobacco to prisoners in county jail.

### OPINION

{\*322} I am in receipt of your letter of the 12th inst. asking for the opinion of this office in regard to a number of questions involved in your examination of the accounts of the various officials of Lincoln County.

Your first question is: Could the county treasurer be engaged as a physician to examine insane persons, act as physician to prisoners held at the county jail and receive compensation for exhuming a body by order of the District Court. It appears from your statement that the county treasurer of Lincoln County is a physician, and I can see no objection to his being employed by the county, or by order of the District Court in the line of his profession, such services rendered not being in any way connected with the discharge of his official duties as treasurer.

Your second question is as to whether assessors, serving as such, prior to the admission of New Mexico as a state, are entitled to four per cent on collections made by treasurers serving since New Mexico became a state. In reply to this, I have to say that assessors are entitled to receive four per cent upon all moneys collected or received by county treasurers, the direct receipts of assessments made by such assessors prior to January 6th, 1912, the date upon which New Mexico became a state, such compensation, however, not to exceed the amounts provided for in Chapter 114 of the Session Laws of 1909.

Your third question in regard to the powers and duties of the county treasurer of Lincoln County, with respect to the payment of bonds issued by that county to the county of Socorro, as authorized by Section 2 of Chapter 112 of the Session Laws of 1909, cannot be answered intelligently without having at hand a copy of one of the bonds so issued, the recitals of which would govern their redemption.

Your fourth question is as to whether a county is expected to furnish shoes, clothing and tobacco to prisoners confined in the county jail, and, if so, to what extent and under

whose supervision would such supplies be furnished. Under the provisions of Section 831 of the Compiled Laws of 1897, the sheriff of a county, under the superintendence of the county commissioners, shall provide the jail with all necessary things, "as wood, candles, kitchen furniture, irons, etc.," the expense incurred for such things being payable out of the county treasury upon accounts approved by the county commissioners. {\*323} The "etc.," in this statute is, of course, somewhat indefinite, but would seem to leave to the discretion of the sheriff and the county commissioners the purchase of articles other than those enumerated. The general rule of law is that, when a sheriff has imprisoned a human being, "he is bound to exercise ordinary and reasonable care under the circumstances of each particular case for the preservation of the life and health of such prisoner." It would seem that, if absolutely necessary, it would become the duty of a sheriff to furnish clothing and shoes to a prisoner when such articles were actually needed. As to the furnishing of tobacco, while that article may not be one of the necessary things mentioned in the statute, yet the custom of providing it for prisoners is, so I am informed, general throughout the state. As an instance, I will cite the State Penitentiary at Santa Fe, which provides, at the public expense, large quantities of tobacco for the convicts, in the absence of any statute authorizing the expense of so doing.