

Opinion No. 23-3737

October 17, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. George H. Barrows, Assistant State Comptroller, Santa Fe, New Mexico.

Jailer is not Entitled to Board at Public Expense.

OPINION

{*97} We quote your inquiry as follows:

"In many places I find that the Counties have been paying for the board of the jailer as a "Jail Guard."

{*98} Please advise if it is legal to pay the board of the jailer and in case you find it is not legal please differentiate between the two officials and outline the duties of the two officers so that an auditor may determine as to whether the counties are liable for such board."

The county jailer, under the provisions of Sec. 4, Chap. 12, S. L. 1915, shall be appointed by the sheriff without the intervention of the district judge. His salary shall be fixed by the county commissioners not to exceed the sums provided in said section for the class of county such jailer may serve. This compensation, so fixed by the county commissioners, constitutes his compensation and does not entitle him to his board at the county's expense.

The compensation of the jail guard shall be fixed also by the board of county commissioners and shall not exceed \$ 2.00 per day. No jail guard is usually appointed or required except in emergency cases and then only upon order of the district judge, or, in his absence, by the board of county commissioners. -- Sec. 4, Chap. 12, S. L. 1915.

Sec. 1, Chap. 125, S. L. 1919 provides for the payment of the actual cost of feeding a "jail guard," not the "county jailer." We find no authority of law authorizing the payment of the cost of feeding the jailer and, therefore, conclude that the practice of such procedure is illegal.

While the duties of the county jailer and the jail guard are somewhat similar they are separate and distinct officers. The law contemplates the appointment of but one county jailer. It contemplates the appointment of as many jail guards as may be deemed necessary under any emergency. The necessity, however, for the appointment of one or more jail guards must be concurred in by both the sheriff and the district judge. When,

however, an emergency arises and the district judge may be absent, the appointment of necessary jail guards may be made by the sheriff with the concurrence of the board of county commissioners.