

Opinion No. [29-68]

October 19, 1929

BY: J. A. MILLER, Assistant Attorney General

TO: Hon. Ramon Aragon, County Clerk, Santa Rosa, New Mexico.

PRISONERS -- Maintenance of in penitentiary a preferred claim against county.

OPINION

Reference is made to previous correspondence and especially to your letter of the 17th inst. in re the amount now due and owing by Guadalupe County for the maintenance of John Saxon and Charles Fee in the State Penitentiary for safe keeping from January 23 to March 20th, inclusive, 1928, one hundred and fourteen days at one dollar per day.

You state that the Board of County Commissioners will meet on the 5th day of November and you suggest a payment of the bill from funds as follows:

Out of the 1927 and 1928
General County Fund \$ 77.00
Out of the 1924 and prior
General County Fund 36.99

Total \$ 113.99

In this connection your attention is again directed to the second paragraph of section 1, chapter 92, Laws of 1919, which provides that whenever a person, on the order of the District Judge, has been placed in the State Penitentiary for safe keeping, the expense incurred for maintenance shall be borne by the county from which said prisoner has been ordered and such bill of expense shall be made a **preferential bill of expense and shall be paid in full before any bill, fees or salaries are paid.**

I assume that what you desire is an opinion as to whether or not this particular bill, which was incurred in the year 1928, may be paid from the funds suggested and this brings us to a consideration of the Bateman Act, particularly section 1227, 1228, 1229 and 1230 of the Codification of 1915, which it is not necessary that I quote in full since these are all available for your examination. Briefly, however, it is noted that section 1227 limits counties and other municipal subdivisions in their expenditures for any particular year for any purpose whatever to the money actually collected and belonging to that current year and declares void any debt contracted during any year which at the end of such current year is not and cannot then be paid out of the money actually collected and belonging to that year and a penalty is provided for the punishment of any officer of any county, etc., who shall use the fund belonging to any current year for any other purpose than paying the current expenses of that year.

Section 1228 provides for the pro rating and reduction of salaries and perquisites when there is not enough money collected from the taxes of any current year to pay such salaries in full.

Section 1229 is to the same effect and includes among the obligations to be reduced and pro rated in the event of insufficient money all claims except that all the actual expenses for boarding county prisoners shall be paid in full before any bill, fees or salaries are paid and before any pro rating is made and that such expenses may be paid at the expiration of each and every quarter. This proviso was not in the original act but was added by act of March 16, 1901, Chapter 36.

From the provisions of the sections above mentioned and the provision of Chapter 92 of the Laws of 1919, to which reference has been made, it is apparent that the bill for the maintenance of the Guadalupe County prisoners should have been settled in full long ago as a preferential bill of expense even though such payment might have necessitated a reduction and pro rating of other claims.

Although the sections discussed provide for a pro rating and reduction of claims and declare null and void indebtedness for a current year which cannot be paid from taxes collected in that year, you will note that there is a modifying provision made by section 1230 to the effect that such void indebtedness shall remain valid to the extent of and for the purpose of receiving money which may afterwards be collected and which belongs to the year when such debt was contracted. If applied to the indebtedness under consideration and in view of the preferential nature of such indebtedness, it would appear that only taxes for the year 1928, that is taxes falling due and payable within the year 1928, may be used for the discharge of this indebtedness, but that this being a bill for the actual expenses of boarding county prisoners placed in the State Penitentiary for safe keeping, such now delinquent taxes as rapidly as collected should be applied to the payment in full of this account before any part thereof is applied to the payment of any other claim to which they might otherwise be made applicable.

It is suggested that at the November meeting of your Board of County Commissioners any balance in the hands of the treasurer arising from taxes for the year 1928 be applied to this account and that if insufficient to pay the bill in full, provision be made for quarterly payments on the unpaid balance as rapidly as 1928 taxes become available and without applying any of such taxes to any other account until this claim is fully paid.