

Opinion No. [30-17]

June 14, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: W. B. Walton, District Attorney, Silver City, New Mexico. Mr. G. E. Hoskins, Sheriff, Deming, New Mexico

COUNTY OFFICERS -- Sheriffs not to make profit from feeding prisoners.

OPINION

We have taken some time to study and consider the situation presented to us by Mr. Walton's letter of June 5th and by Mr. Hoskins personally on June 7, in re the difference of opinion between Mr. Hoskins, as Sheriff, and the Board of County Commissioners of Luna County in re the payments made by the United States for the care and maintenance of prisoners committed by the United States to the Luna County jail.

There seems to be no dispute as to the facts, that is, it appears that many federal prisoners are held from month to month in the Luna County jail, many of them on charges of violations of the immigration laws and such prisoners are held in Deming in order that they may be at a convenient place for transportation and deportation. The number, of course, varies from time to time, but as we understand approximates 80 to 90 per month.

For the maintenance of these prisoners the government pays seventy-five cents per day per prisoner. It is our understanding that this money paid by the Federal Government is not merely pay for the food supplied prisoners but for the guarding, housing and general maintenance and care as well. It is also our understanding that all supplies of whatever nature, whether food stuffs, bedding, soap, disinfectants or whatnot used and consumed in the county jail, are purchased by the sheriff as purchasing agent for the Board of County Commissioners and paid for out of the county funds, no money being expended personally by the sheriff in these matters.

From an examination of statutes, we find that the common jails are under the control of the respective sheriffs of each county and are used as prisons and places of confinement of prisoners in the county wherein offenses have been committed and as well for the detention of those held for trial. Sections 75-101 and 75-102, Codification of 1929.

Sections 75-103 and following outline the duties of the sheriffs with reference to the care of prisoners under their charge.

Section 75-109 is as follows:

"Hereafter the sheriffs of each county in the State of New Mexico shall supply with food the prisoners in their respective counties. . ."

and by section 75-112 it is made the duty of the sheriff to act as purchasing agent for the county commissioners in the purchase of supplies other than foods.

Section 75-120 has to do with the care of prisoners from other counties and makes it the duty of county commissioners to make "proper arrangements" for such prisoners.

An old statute, section 33-4426, is omitted from consideration here for the reason that it seems to be superceded by a later statute, 33-3205, which is as follows:

"The actual cost of feeding jail prisoners and guards shall be paid quarterly out of the General County Fund of the several counties of the State but in no event shall more than actual cost be paid and in no event shall the amount paid exceed seventy-five cents per day for each prisoner and guard, provided no accounts for the feeding of prisoners and guards shall be paid unless the same are fully itemized and verified by the sheriff and approved by the Board of County Commissioners."

The foregoing references all have to do with state prisoners rather than with federal prisoners. Concerning the latter we quote two sections of the Codification.

"75-114. **United States Prisoners. It shall be the duty** of the sheriff of each county, his deputy or jailor, to whom any person shall be remitted in conformity with a legal process issued by or under the authority of the United States and **he is hereby required** to receive such person or persons into his custody and keep them safely until they shall be placed at liberty according to the laws of the United States, provided that the United States shall be responsible for the pay of their **subsistence and jail fees** of such persons in the same manner as provided for the imprisonment and support of every person imprisoned by the order of any public magistrate of this State."

"75-115. **United States Prisoners -- Report to Court.** The sheriffs of the different counties of this State whenever they shall have under their charge any prisoners as set forth in the foregoing section, shall, at each regular term of the District Court of the United States, submit to said court a list of all the prisoners under their charge by authority of the United States for the information of said court, setting forth the date of their imprisonment, by whom delivered, into their custody and for what offense, accompanied with a just and correct account of all the expense of their maintenance and detention, for the consideration of said District Court of the United States and for the approval and order of said court for the payment of the same."

From statutes so far considered it seems apparent that it was not contemplated by the legislature that anyone should make a profit from the feeding of county prisoners or the maintenance and care of Federal prisoners.

The geographical location of Luna County and Deming in that county bring it about that probably a greater number of Federal prisoners will be found committed to that county jail than in most other counties. This, of course, imposes upon the sheriff of that county duties and burdens from which the majority of sheriffs are free. The Legislature, however, seems to have had this in mind when passing the several county salary bills, the last of which was enacted as Chapter 99 of the Session Laws of 1929 and which in fixing the salary of the sheriff for counties of the second class used this language:

"Sheriff, \$ 2700.00, provided, in counties of the second class bordering upon a foreign country the salary of the sheriff shall be \$ 3,000.00 per annum."

and it contains the further proviso,

"And, Provided, further, in counties bordering upon a foreign country, additional deputy sheriffs may be appointed by the sheriff at an expense not to exceed Fifteen Hundred Dollars per annum, to be paid by such counties."

From information supplies us by the State Auditor, we learn that Luna County is the only county of the second class in this State which borders on a foreign country.

Section 1 of Article X of the State Constitution contains this language:

"No county officer shall receive to his own use any fees or emoluments other than the annual salary provided by law and all fees earned by any officer shall be by him collected and paid into the treasury of the county."

Another section of the statute, Codification of 1929, is as follows:

"33-3206. **No compensation except as provided in this act.** No county officer shall accept or receive to his own use or for, or on account of any deputy or deputies, clerk or clerks appointed by him, or employed in his office or for, or on account of expenses incurred by him or by any such deputy or deputies, clerk or clerks, or for, or on account of his office any salary, compensation, allowance, fees, or emoluments in any form whatsoever other than as by this act allowed."

In consideration of the constitutional provision the statutes quoted and the facts as stated, we are of the opinion that any compensation paid by the Government of the United States for the care and maintenance of Federal prisoners should be collected by the sheriff and by him paid into the treasury of the county.