

County Commissioners—Authority to Furnish Fuel for Cooking Food of Prisoners.

The County Commissioners are without authority to furnish coal or fuel for the purpose of cooking food furnished to the prisoners by the Sheriff.

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County Attorney,
Glendive, Montana.

My dear Mr. Foss:

You have inquired whether the cost of coal used by the Sheriff in cooking the meals of prisoners confined by him in the county jail is a proper charge against the county.

The facts submitted are that the cooking of the meals for the prisoners is done in the Sheriff's residence by the Sheriff or someone under his direction, and coal was purchased by the Sheriff for this purpose and the bill was presented by the persons furnishing the coal to the county.

Chapter 81 of the Laws of 1919 reads as follows:

"The fees allowed sheriffs of the several counties of the State for the board of prisoners confined in jail under their charge shall be at the rate of seventy-five cents (75c) per day for each of said prisoners when the number of prisoners shall be twenty or less each day, and when the number of the prisoners per day shall exceed twenty and be less than fifty, then at the rate of sixty cents (60c) per day for each of said prisoners in excess of twenty per day and less than fifty per day, and when the number of the prisoners per day shall exceed fifty, then at the rate of fifty cents (50c) per day for each of said prisoners in excess of fifty per day."

It is to be noted that the fees therein provided are for the "board of prisoners." This evidently means the sustenance of prisoners and does not include the furnishing of the jail, or the heating, lighting, or such other things as may be necessary for the proper conduct of the jail itself, inasmuch as the providing of a jail and furnishings is made the duty of the County Commissioners. (Chap. 15, Subd. 9, Laws of 1919.) While there are cases holding that it is not the duty of the Sheriff to furnish light, brooms, coal, etc., for the jail itself under the provision requiring him to furnish "board to prisoners" and allowing him fees therefor (*Masson County v. Reissner*, 58 Ind. 260), I believe that this rule has no application to the present question, these matters being included in the providing of the jail itself.

It has been held by a previous Attorney General that despite the fact that the cost of board to prisoners might exceed the fees provided, the County Commissioners have no authority to make any additional allowance over and above the amount of such fees (Vol. 7, *Opinions Attorney General*, 167). The purchase of coal by the county for the purpose of preparing the food would amount to the same thing as allowing the Sheriff an amount additional to the fees provided, inasmuch as the cost of the fuel would be added to the amount of the fees.

It has also been held that the Sheriff must expend the full amount allowed by law for the purpose designated, and that he will not be permitted to make any profit therefrom.

8 Opinions Attorney General, 120;

Sharrenbroich v. Lewis and Clark County, 33 Mont. 250.

It is, therefore, my opinion that the County Commissioners are without authority to furnish coal or fuel for the purpose of cooking the food furnished to prisoners by the Sheriff, and that the Sheriff must provide for the cooking of the food and furnish it in its prepared form out of the fees allowed him under Chapter 81 of the Laws of 1919.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.