

**State Board of Examiners, Helena, Montana. May 1st, 1908.
State Prison. Expenses of Trial of Convicts, Payment of Claims
For.**

Under the provisions of Sec. 226 of the Penal Code, the expense of the trial of prisoners confined in the state prison, for crimes by them committed subsequent to their committment, must be paid by the state from the money appropriated for the support of the state prison, and where a claim is presented to the state accruing prior to the time of the passage of the law providing for the existing appropriations for the maintenance of the penitentiary, same must be referred to the legislative assembly by the board of examiners for a special appropriation.

Helena, Mont., May 1st, 1908.

State Board of Examiners,
Helena, Montana.

Gentlemen:

Pursuant to your request for an opinion from this office respecting the payment of certain claims against the state made by Powell county which have been presented to the state board of prison commissioners and to you, for allowance and payment as proper and legal charges against the state, you are advised with respect thereto as follows:

The claim of said county for expenses incurred in the trial of the case entitled in re Michael Mahakus, and also the claim in the case entitled in re Charles Rehret, being each for expenses incurred by said county since the 28th day of February, 1907, you are advised that they should be allowed and paid from the money appropriated and available for the support and maintenance of the state prison for the years 1907-08. The claims are regular in form and seem to be entirely in conformity with the provisions of Section 226 of the Penal Code. As to the claim of said county heretofore filed and presented on the 9th day of February, 1905, and which appears to have been by the board of examiners approved on that date, it appearing that said claim was referred to the legislative assembly for deficiency appropriation, the maintenance appropriation then existing not being sufficient to permit of the payment of said claim, and the legislative assembly having failed to make such deficiency appropriation so that the claim might be paid, you are advised that this claim will have to be again presented to the

legislative assembly and a special appropriation made to pay the same. The provisions of Section 226 of the Penal Code make it very plain that such claims as these, when approved by the board of prison commissioners and the board of examiners, must be paid out of the money appropriated for the support of the state prison.

The constitution provides that no money shall be paid from the state treasury except for claims authorized by law and from appropriations made, and further, that no appropriation of public money shall be made for a longer period of time than two years.

The authority of law for the payment of the first two claims herein mentioned and considered is found expressly in said Section 226 of the Penal Code, and we have appropriations made by law, and now in existence and available, for the support of the state prison during the years 1907-08; therefore, these said first two claims must be paid from the unexpended portion of the money so appropriated by law for the support of the state prison during the years 1907-08.

As to the third claim herein mentioned and considered, its payment finds authority by the terms of the same law, but we have no appropriation available with which to pay the same, and therefore this claim must be again referred to the legislative assembly for the making of a specific appropriation before the same can be allowed and paid by the executive department of state. This for the reason that the law making the appropriation for the support and maintenance of the state prison at the time said claim originated and was presented to the board has ceased to exist, and any claim now presented to the state for the support and maintenance of the state prison accruing and presented prior to the creation by law of the present appropriations for the maintenance of the state prison cannot be paid therefrom. The appropriations which are now available by law were made for the maintenance of the state prison during the years 1907-08, and any claim arising proper to be paid by the state for maintenance in 1905 must, of necessity, be referred to the legislative assembly in order to have a special appropriation made with which to pay the same.

I herewith return to you all three of said claims.

Respectfully submitted,

ALBERT J. GALEN,
Attorney General.