

**Fees, of Sheriffs. Sheriffs, Fees, for Boarding Prisoners.
Federal Prisoners, Compensation for Board of.**

The sheriff has jurisdiction in the matter of boarding and housing federal prisoners. The United States should make settlement for the service directly to the county. The sheriff shall be reimbursed for the board of all prisoners (except those confined under civil process) from the county treasury, at the legal rate of fifty cents per day. The difference between said sum and that received from the government belongs to the county.

June 14th, 1913.

Hon. W. M. Biggs,
County Commissioner,
Helena, Montana.

Dear Sir:

Under date of June 11th, 1913, you wrote to this office as follows:

"The board of county commissioners of Lewis and Clark County hereby submit to you for an opinion the following questions:

"First—Who has jurisdiction in the matter of boarding and housing federal prisoners confined in county jails?

"Second—To whom should the government make settlement for this service?

"Third—What is the legal fee to be paid sheriff for boarding federal prisoners?"

I have given careful consideration to the inquiries contained in your letter, and beg leave to advise that I think it is a well established principle of law in this state that no fees or compensation are to be allowed the sheriff for any services performed by the sheriff, except by way of reimbursement, and that the only profit or reward which a sheriff may receive is the salary fixed by law. As bearing upon the feeding of prisoners in the county jail, the dictum of our supreme court in the case of Scharrenbroich v. Lewis and Clark County, 33 Montana, 250, is worth quoting:

"If the statute allows fifty cents per day for feeding a prisoner, there is no understanding that the sheriff may make any gain or profit for his private use out of this stipend. The direction of the legislature is to give that prisoner fifty cents worth of food every day, and not to feed him perhaps on bread and water at an expense of five cents, thus making forty-five cents for the sheriff. The object of the law is to put food in the stomach of the prisoner and not money into the pocket of the sheriff."

We are satisfied of the soundness of the principle here announced, and an examination of the statutory provisions, with reference to the feeding of prisoners render your inquiries easy of solution.

Section 9763 of the Revised Codes of Montana, 1907, provides:

"The sheriff must receive, and keep in the county jail, any prisoner committed thereto, by process or order issued under the authority of the United States, until he is discharged according to law, as if he had been committed under process issued under the authority of this state, provision being made by the United States for the support of such prisoner."

It will be observed that under the provisions of the section just quoted, federal prisoners are to be received and kept in all respects as though committed under process issued under the authority of this state, and the law does not contemplate that they shall receive different or better food or treatment than is to be given or accorded

to prisoners committed under state authority. Sec. 9773 (Idem.) provides:

"The sheriff must receive all prisoners committed to jail by competent authority, and provide them with necessary food, clothing and bedding, for which he shall be allowed a reasonable compensation, to be determined by the board of county commissioners, and, except as provided in the next section, to be paid out of the county treasury."

The next section referred to has to do only with prisoners committed on civil process, and it follows that with reference to all prisoners received at the county jail, pursuant to commitment, issued by competent authority, must be received by the sheriff, and he shall be compensated therefor from the county treasury, and not otherwise.

As to the amount of compensation to be received by him, Sec. 3188 (Idem.) provides that he shall receive fifty cents per day for each of said prisoners.

Sec. 5536 of the Revised Statutes of the United States provides for the payment out of the treasury of the United States of all expenses attendant upon the confinement of prisoners arrested or committed under the laws of the United States. The annotation to this section (Federal Statutes, Annotated, Vol. 6, p. 33) contains the gist of the opinion rendered by the attorney general of the United States, wherein the word "expenses" is defined:

"What are these expenses? A reasonable agreed sum for the nourishment and clothing of prisoners in such prisons, and for the other means of comfort and health which it affords, as fuel and medical services, and for the custody of the prisoner, which includes the cost of construction, reparation, occasional improvements and ordinary wear and tear of the establishment; that is, in a word pro tanto indemnification of the state. * * * The compensation in such case is due to the state as such, but is payable to any lawfully appointed agent of the state."

Sec. 5539, Revised Statutes of the United States, provides:

"Whenever any criminal, convicted of any offense against the United States is imprisoned in the jail or penitentiary of such state or territory, such criminal shall in all respects be subject to the same discipline and treatment as convicts sentenced by the courts or territory in which such jail or penitentiary is situated; and while so confined therein, shall be exclusively under the control of the officers having charge of the same, under the laws of such state or territory."

It will thus be seen that both under the federal statutes and the statutes of this state no discrimination is to be tolerated as between federal and state prisoners, nor is it consistent with the spirit of our laws that the sheriff should receive any different or greater sum in boarding prisoners of the one class than he receives from boarding another class, the policy of the law being to compensate him for actual outlay.

Therefore, as to your first inquiry, the answer is, that under our law the sheriff has jurisdiction in the matter of boarding and housing federal prisoners confined in the county jail; as to your second inquiry, the answer is, that the United States should make settlement for this service directly to the county, and that for the board of all prisoners, save those confined under civil process, the sheriff shall be reimbursed from the county treasury; as to your third inquiry, the answer is, that the legal fee to be paid the sheriff for boarding federal prisoners is fifty cents per day; with reference to this last statement, you are advised that the difference between what the federal government pays to your county, and what the sheriff actually receives, belongs to the county as reimbursement to it for fuel and medical services, and for providing safe places for the custody of federal prisoners, which includes the cost of constructing, repairing and improving the county jail, and the wear and tear of the establishment, etc., and in no sense can the sheriff lawfully avail himself thereof.

Yours very truly,

D. M. KELLY,
Attorney General.