

**Prisoners, Work of. Work, of Prisoners. Sheriff, Liability of for Escape. County Commissioners, Authority of to Work Prisoners.**

Under the provisions of the statute, the county board has the authority to require that prisoners confined in the county jail be required to labor upon the public roads, and the sheriff being the custodian of the prisoners is liable for escapes.

May 13, 1914.

Hon. A. H. McConnell,  
County Attorney,  
Helena, Montana.

Dear Sir:

I am in receipt of your letter submitting for consideration certain questions addressed to you by the sheriff of Lewis and Clark county, and I am also in receipt of copy of your opinion in reply to the sheriff's request. The questions submitted, related to the authority of the board of county commissioners to order prisoners confined in the county jail after conviction to be required to perform labor on public works, etc.; the liability of the sheriff for escape of prisoner while so employed; the duty of sheriff in case demand is made to produce any such prisoner in court; the duty of the sheriff to provide sufficient number of guards, etc., while such prisoners are employed outside of the jail.

The authority of the board to require prisoners confined in the county jail after conviction to perform labor on "public works or ways in the county" is given by express statutory provision, as contained in Section 9775, Revised Codes, and the section immediately following requires the board to prescribe and enforce necessary rules and regulations relating to such labor. This statute is not a new enactment, but is substantially the same as that found in the compiled laws of 1887, as Section 1280, 5th division, page 1002. It is also carried forward in the Codes of 1895 as Sections 3038-9, penal code. The provisions of Section 9762, Revised Codes of 1907, which requires actual confinement of such prisoners in the jail, except when permitted to go outside by virtue of a legal order or process, is also not substantially different from the general provisions of the compiled statutes of 1887, as found in Chapter 65, 5th Division, page 999, which is also reiterated in the Penal Code of 1895, as Section 2035. The phrase used in Section 9762 "a legal order or process" would undoubtedly have reference to a process issued by court. However, a prisoner who has been removed from the county jail for the purpose of being worked on the roads, pursuant to an order made by the board of county commissioners, would certainly not be subject to arrest and conviction as for an escape. Hence, the order of the board of county commissioners made in pursuance to the authority granted by Section 9775 is to that extent at least, a compliance with the provision of Section 9762, which prohibits the removal of a prisoner from the county jail without an order. The sheriff of the county is the legal custodian

of the prisoners, and in case of any escape, either from the jail or from a road camp he would be at least required to report on the same, and if the circumstances showed negligence on his part, he would be undoubtedly liable. The board in ordering prisoners to work on the roads should also provide that they be accompanied by a suitable number of guards, and the sheriff may find protection from the fact that if he is ordered by the county commissioners to work prisoners on the road, and is prohibited from employing the necessary number of guards, in application to the judge of the district court, who in such case would make the necessary order, but it cannot be supposed that any board of county commissioners will be negligent in its duty, but that when prisoners are ordered to work on the roads, the Board will at the same time provide that they be accompanied by a sufficient number of guards to insure their return. Neither the sheriff, nor the board of commissioners have any authority to turn a prisoner loose; hence, neither the sheriff nor the board would be justified in sending prisoners out unguarded.

While the question is not involved in the inquiry submitted, it may be proper to call attention to the fact that these provisions of the statute above referred to, have reference to persons convicted in courts of the State of Montana, and do not necessarily confer upon the board of county commissioners jurisdiction over a federal prisoner. The judgment made or commitment issued by a federal court in case of conviction, is the guide to be followed by the officer having such prisoners in charge. The support of a federal prisoner is provided for by United States law. I am inclined to think that your conclusions expressing the law on this subject, are correct.

Yours very truly,

D. M. KELLY,  
Attorney General.