

State Prison, Escapes From. Escape, From State Prison. Prisoner, Charged With Escape. Counsel, Right of Prisoner. Prisoner Without Means, Right to Counsel. Cost of Trial, State Charge.

A prisoner who escapes from state prison is entitled to have counsel defend him. If he be without means the court shall appoint counsel. The costs of trial incurred by the county is a proper charge against the state, and should be presented to the Board of Prison Commissioners for approval and settlement.

January 14, 1915.

Hon. J. J. Ryan,
Clerk, Consolidated Boards,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of the 9th inst., with enclosures showing the payment by Powell County of the sum of \$150 for fees to any attorney appointed by order of court to defend three men charged with the commission of crime, and requesting my opinion as to whether or not the State is liable for this charge.

Sec. 9188, Revised Codes, provides that when a defendant appears for arraignment without counsel it is the duty of the court to inform him of his right to have counsel and to ask him if he desires counsel, and if the defendant answers that he does and is without means to employ same the court must assign counsel to defend him.

Sec. 9189 provides that when in a criminal action or proceeding in the District Court an attorney at law defends a person charged with crime, by order of court, the county in which such criminal action or proceeding has arisen is liable for the payment to such attorney for his services such sum as the Judge certifies to be a reasonable compensation therefor.

Secs. 8222 and 8223, Revised Codes, provide the punishment for escapes or attempted escapes from the state prison.

Sec. 8228, provides:

"Whenever a trial takes place of any person under any of the provisions of Sec. 8222 and Sec. 8223, of this Code, and whenever a prisoner in the state prison shall be tried for any crime committed therein the county clerk of the county where such trial is had shall make out a statement of all the costs incurred by the county for the trial of such case, and of guarding and keeping such prisoner, properly certified by a district judge of said county, which statement shall be sent to the board of state prison commissioners for their approval; and after such approval, said board must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison, to the county treasurer of the county where such trial was had.

You are therefore advised that the State of Montana is liable for the payment of the bill presented, under the provisions of said Sec. 8228, and if made out in accordance with the provisions above quoted should be presented to the Board of Prison Commissioners for its approval and settlement.

Yours very truly,
D. M. KELLY,
Attorney General.