

**Sheriff, Boarding Prisoners. Prisoners, Boarding of by Sheriff. Feeding Prisoners, for Fractional Days.**

The sheriff has authority to charge the county at the rate of fifty cents per day for boarding prisoners only when food of such value has actually been furnished.

February 14, 1916.

Hon. Frank Arnold,  
County Attorney,  
Livingston, Montana.

Dear Sir:

I am in receipt of your letter of the 11th instant, requesting my opinion upon the following question:

"Has the sheriff authority to charge for the day the prisoner entered the jail and also for the day when leaving?"

This office has held that a sheriff of a county is not entitled to any profit or reward for feeding prisoners committed to his care; that he is entitled to reimbursement only for his actual outlay or expense incurred in this behalf (Vol. 5, Opinions Atty. Gen., p. 207.) Section 9773 provides that the sheriff shall be allowed a reasonable compensation for necessary board, clothing and bedding furnished prisoners, and by the terms of Section 3138, *idem*, the legislature has determined that fifty cents per day is a reasonable compensation for the food daily furnished to a prisoner. Our Supreme Court has said upon this subject:

"The object of the legislature was to have certain services performed for the people, and not to make money for a sheriff or to set him up in business. The old idea of paying an officer was to feed him and clothe him and take care of his family, while he was giving his services to the people. There never was any idea that holding public office was a private business.

"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 into the stomach of the prisoner, and not money into the pocket of the sheriff."

Scharrenbroich v. Lewis & Clark Co., 33 Mont. 250 on page 258.

A case perhaps more nearly in point is that of Pressly v. Board of Commissioners, 80 Indiana, 45, wherein the doctrine is laid down that generally the law will not regard the fraction of a day, but this maxim is a fiction of law indulged for convenience, and to promote the ends of justice, but never allowed where it will promote injustice or wrong, and that it does not apply in a case such as the one under consideration. In the course of the opinion the following language is used:

"If the sum specified is a fair compensation for the food consumed by a prisoner in one day, it would be more than a just compensation for the quantity consumed by him in one-third or two-thirds of a day, and in justice the sheriff ought not to be paid for a full day's board for one meal, or one-third of a day's board. If an employer should agree to pay his employee one dollar per day for his work, no one would think the latter entitled to a dollar for a half day's work. Nor, should one agree to board another for a dollar per day, or six dollars per week, would it be thought that the landlord could charge the boarder a dollar for a half day's board, or six dollars for less than a week's board."

Section 9778 of the Code requires the sheriff on the first Monday in January and every three months thereafter to return to the county commissioners a certified list of the names of all prisoners in his custody on the last day of the preceding month, together with the length of time for which they were committed, and the number received and discharged during the preceding three months. The object of this section is to inform the county board of the exact time and the number of prisoners the sheriff has fed, to the end that he may be reimbursed for his actual expenses. It is apparent, therefore, that the sheriff has authority to charge only for such food as he actually furnished to prisoners in his charge, at the rate of fifty cents for each full day of service.

Yours very truly,

J. B. POINDEXTER,  
Attorney General.