

**County—Jury—Expenses—Sheriff.**

Where in a civil action the court on its own motion ordered the jurors kept together until finally discharged, the expense incurred for meals and lodging furnished to the jury is a proper charge against the county.

E. J. Cummins, Esq.,  
County Attorney,  
Deer Lodge, Montana.

My dear Mr. Cummins:

You have submitted to this office the question whether, where the court in a civil suit has, of its own motion, made an order directing the bailiff to keep the jurors together and not allow them to separate until finally discharged, the county is liable for the hotel bill for meals and lodging of the jurors.

The Court, no doubt, has authority to make such an order as was made in this instance in a civil case and require that the jurors be kept together, either before or after the case has been submitted to them (Section 9351, R. C. M. 1921).

There is no provision of law authorizing meals for the jurors while being thus kept together by the Sheriff, to be charged as costs, and in the absence of statutory provision authorizing it, such expenses may not be charged as costs. (Irrgang v. Ott, 99 Pac. 528.)

Section 12010, Revised Codes of 1921, provides for payment by the county as follows:

“When the jury are kept together, either during the progress of the trial or after retirement for deliberation, they must be provided by the Sheriff, at the expense of the county, with suitable and sufficient food and lodging.”

While this section is found in the Penal Code, its history shows it to have been a part of our law from very early times, and, I believe, it is equally applicable to civil cases, where the Court, under Section 11998, orders the jurors to be kept in charge of the proper officer and not allowed to separate.

It is, therefore, my opinion that the expenses incurred in this case for meals furnished members of the jury while being kept together by an order of the Court are a proper charge against the county.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.