

Prisoners—Military Courts—County Jails—Board—National Guard.

Under section 12482, R. C. M. 1921, providing that the board of prisoners committed to the county jail shall be paid out of the county treasury, the cost of the board of a prisoner committed by a military court should be paid by the county and not out of the funds of the national guard.

Col. Erastus H. Williams,
Adjutant General,
Helena, Montana.

May 9, 1925.

My dear Colonel Williams:

Your letter was received enclosing correspondence relative to the liability for the payment of the board of a prisoner confined in a county jail under sentence by military court.

Section 1394, R. C. M. 1921, clearly requires sheriffs to receive military prisoners committed to jail.

Section 12482, R. C. M. 1921, provides that the sheriff must receive all persons committed to jail by competent authority and must provide them with necessary food, etc., 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 exception contained in the section referred to relates to persons committed on process issued in a civil action and has no application to the facts involved in the present inquiry.

Section 4886, which fixes the fees of the sheriff for board of prisoners, is to be read in connection with section 12482, *supra*, which provides that such compensation shall be paid "out of the county treasury." There is no question but that the prisoner in this case was committed to the county jail by "competent authority," to-wit, the authority of a military court of the organized militia of the state of Montana. (Section 1382.)

There is no provision in the militia act which authorizes the payment of the cost of the board of a prisoner when committed to a county jail. In the absence of such provision and in view of the statute above cited, it is my opinion that the board of this prisoner is a proper charge against Flathead county and is not payable out of the funds of the national guard. The same principle here relied upon was applied by this office

to a slightly different state of facts in an opinion of the attorney general reported at page 207, volume 5, opinions of the attorney general, in the following language:

"It follows that 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."

The only provision of the militia act which might have application to the question here presented is section 1396, R. C. M. 1921, which reads as follows:

"Fees and mileage allowed for the service of process and for civilian witnesses shall be the same as in civil actions. All expenditures necessary to carry the provisions of this act into effect are hereby authorized to be incurred and paid out of the appropriations for the maintenance of the organized militia of Montana."

This section is a part of chapter 191, laws of 1919. For convenience of codification this act was divided into a number of chapters in the revised codes of 1921, and the above section chances to appear in a chapter entitled "Military Courts." In my opinion, however, the words "all expenditures" as used in section 1396 include not only the specific fees and mileage referred to in the section but also embraces all other expenditures "necessary for the maintenance of the organized militia of Montana," such as pay of officers and enlisted men, transportation, subsistence, etc. I do not, however, think that this section has reference to expenditures for any other purposes than those expressly enumerated in the militia act.

In the absence of any express provision in the militia act for payment of the board of military prisoners I conclude that section 1396 cannot be said to authorize such expenditure from the funds appropriated for the maintenance of the organized militia.

Very truly yours,
L. A. FOOT,
Attorney General.