Sheriffs—Counties—Claims—Medical Care—Hospital Fees—Prisoners.

A doctor and hospital bill incurred in caring for a prisoner shot by the sheriff while attempting to escape is not a legitimate claim against the county.

J. D. Taylor, Esq., March 10, 1926.
County Attorney,
Hamilton, Montana.

My dear Mr. Taylor:

You have requested my opinion whether the county is liable for hospital and medical attention furnished to a prisoner who was shot by the sheriff while attempting to escape.

It appears from your statement of facts that the sheriff took the prisoner to the hospital and called in a surgeon to treat the prisoner.

I find no specific statutory provision bearing upon a set of circumstances such as these.

The supreme court of Mississippi had this question under consideration in a case where the facts were practically identical with those related by you. The statute in that case specifically authorized expenses for medical aid to prisoners confined in jail, and the cost to be borne by the county if the prisoner is unable to pay, but the court held that the statute in question had no application to a prisoner injured while attempting to escape. The case to which I refer is Gray vs. Coahoma County, 16 So. 903. The court in that case, after reciting facts which were practically identical with those submitted by you, said:

> "Section 4139, code 1892, has no application to the case disclosed in the record before us. The man James, to whom the sheriff called the appellant professionally as a surgeon, was not at the time a prisoner confined in the jail of the county. He was not then actually in the custody of the sheriff. He had been causelessly shot down by a deputy of the sheriff, and had been carried to and left in his mother's house, some miles away from the jail, and there he remained during the entire period of time of his treatment by the appellant. It does not even appear that the wounded man was unable to procure for himself needed surgical attention. He was a laborer, and without property, but that is the actual condition of thousands of sturdy, self-helping citizens of this state."

The general rule was also recognized by the court in the case of Mitchell vs. Tallapoosa County, 30 Ala. 130, where the court said:

> "The code makes provision for the support of prisoners confined in jail; but we have not been able to find any law, which fixes a liability on the county for medical attention, drugs, or medicines, furnished to any such prisoner, not at the request of the county, or of the court of county commissioners, but at the re-

quest of the sheriff or jailer. The county cannot be coerced to pay for such medical attention, drugs, or medicines. Van Eppes vs. The Comm'rs Court of Mobile, 25 Ala. 460."

The principle applied by our supreme court in the recent case of Pue vs. County of Lewis and Clark (not yet officially reported) I believe, is applicable to the facts submitted by you. In that case the court said:

"'The general rule is well settled and is constantly enforced that one who makes a contract with a municipal corporation, is bound to take notice of limitations on its power to contract and also of the power of the particular officer or agency to make the contract. That is, persons dealing with a municipal corporation through its agent are bound to know the nature and extent of the agent's authority.' (3 McQuillin on Municipad Corporations, sec. 1165.)

"'It is a general and fundamental principle of law that all persons contracting with a municipal corporation must at their peril inquire into the statutory power of the corporation or of its officers to make the contract. * * * So, also, those dealing with the agent of a municipal corporation are likewise bound to ascertain the nature and extent of his authority. This is certainly so in all cases where this authority is special and of record or conferred by statute.' (2 Dillon on Municipal Corporations, sec. 777.)

"'The rule announced in the above quoted authorities was expressly sanctioned by this court in Keeler Bros. vs. School District, 62 Mont. 356, 205 Pac. 217, where it is said: 'A person dealing with the agents of a municipal corporation must, at his peril, see that such agents are acting within the scope of their authority and line of their duty, and if he makes an unauthorized contract, he does so at his own risk.'

"It is also the rule that the contract of a municipal corporation made otherwise than as prescribed by statute, is not binding and a recovery cannot be had thereon."

There being no statutory provision obligating the county to pay for medical and hospital fees under the facts stated by you, it is my opinion that a claim therefor is not a proper charge against the county.

Very truly yours,

L. A. FOOT,
Attorney General.