Justice Courts—Meals—Expenses—Juries—Trials.

The expense of meals for the jury during the trial of a criminal case in a justice court is a proper charge against the county.

Thomas L. Harvey, Esq., April 19, 1926.
County Clerk and Recorder,
Jordan, Montana.

My dear Mr. Harvey:

You have requested my opinion on the following question:

> "Is the expense of the jury for meals during the trial of a criminal case in a justice court after the case has been submitted to the jury a legal charge against the county?"

There is no specific statute authorizing the payment of expenses for meals furnished the jury in justice court trials. However, section 12319 R. C. M. 1921, provides that "after the jury are sworn, they must sit together and hear the proofs and allegations of the parties, which must be delivered in public, and in the presence of the defendant. The jury must not separate during the trial except by consent of the parties."

Section 12324 R. C. M. 1921, further provides:

> "The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them."

In view of the fact that sections 12319 and 12324, supra, make it mandatory that the jury be kept together and not discharged until after they have agreed upon a verdict, it would appear that the ends of justice demand that the members of the jury be furnished with the ordinary necessities of life while being so confined under the order of the court; otherwise, a verdict might be obtained through the effect of actual physical discomfort rather than through the calm deliberation of the jury on the evidence submitted.

While there is some authority to the effect that in the absence of statute the expenses of the jury for meals is not a charge against either the state or county the weight of authority holds that such expense is a proper charge against the county.

In 35 C. J., 312, it is said:

> "A juror should not be required to pay his own expenses except when he is left free to select his mode of living, and that where by the exigencies of the case he is deprived of this privilge and compelled to live at the discretion of the court, such expenses become incidental to the administration of justice, and like the other incidental expenses of the court should be chargeable against the county. Bates vs. Independence County, 23 Ark. 722; Stowell vs. Jackson County, 57 Mich. 31, 23 N. W. 557; Lycoming County vs. Hall, 7 Watts (Pa.) 290."

It is, therefore, my opinion that such an expense is a proper charge against the county.

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