

**Sheriffs—Jails—Rentals—Claims—County Attorneys.**

There may be conditions under which a county would be justified in permitting the sheriff to occupy rooms adjoining the county jail free of charge or for a reasonable rental.

Since the law does not impose upon the county attorney the duty to ascertain the correctness of claims against the county before they are paid, he is not liable for the allowance and payment, without his approval, of an illegal claim against the county.

Edward M. Tucker, Esq.,  
County Attorney,  
Hamilton, Montana.

April 11, 1927.

My dear Mr. Tucker:

Your two requests for opinions have been received.

The inquiry you have submitted relative to the use of the county jail by the sheriff and his family is one that in my opinion should be

presented to the supreme court for determination. I regard the question as a very close one, and it is clearly a matter of considerable administrative importance in many counties.

While, as a general proposition of law, I am disposed to concur with the opinion of former attorney general Rankin in volume 10, Opinions of the Attorney General, page 97, still, after a careful consideration of this question, it seems to me that there might be conditions under which the county would be justified in permitting the sheriff to occupy rooms adjoining the county jail, free of charge, or for a reasonable rental.

It is the duty of the sheriff to safely keep in the county jail prisoners committed to his charge, and he is answerable for the performance of that duty. (Section 12473 R. C. M. 1921.)

It is entirely possible that the supreme court might hold that in view of the above duty imposed on the sheriff, it is compatible with the performance of such duty that he should occupy rooms adjoining the county jail, and that his family should not be separated from him while he is engaged in the discharge of said duty.

I do not feel justified in announcing a hard and fast rule that would be applicable under all circumstances, and I would not, without a full consideration of all the facts, care to express an opinion as to whether any recovery could be had in your county for accommodations of this sort furnished during past years.

If you think the situation in your county demands the institution of an action to test the question, it might be well for you to bring such **a suit.**

Referring to your other letter about the duties of the county attorney with reference to the checking of claims, I have no doubt that the interests of the county would be materially subserved were the county attorney to attend all meetings of the board of county commissioners and check over all claims against the county before they are allowed. I do not, however, find anything in the statute (section 4819), or elsewhere in the code, that imposes any such duty on the county attorney.

Therefore, in the absence of a duty to ascertain the correctness of claims before they are paid, it is my opinion that no liability rests upon the county attorney for the allowance and payment, without his knowledge or approval, of an illegal claim against the county.

Very truly yours,

L. A. FOOT,  
Attorney General.