

Opinion No. 237.

Livestock—Larceny—Trucks—Confiscation—Proceeds of Sale—Distribution—Section 11552.2.

HELD: The costs of arrest and trial of a person convicted of larceny of livestock may not be deducted from the sale proceeds of confiscated trucks used in connection with the theft in the absence of statute authorizing it.

May 28, 1940.

Mr. Paul Raftery
Secretary, Livestock Commission
The Capitol

Dear Mr. Raftery.

You have submitted the following:

“Recently, one Burkholder was convicted in Fallon county of larceny of livestock and is now serving his sentence in the State Penitentiary. Under the provisions of Sections 11552.1 to 11552.4, Chapter 54, Volume 5, Revised Codes of Montana, 1935, two trucks used by Burkholder in committing the larceny were seized by the County Attorney of Fallon County.

“A question arises as to the amount of expenses to be deducted from the proceeds received from the sale of these trucks. Will you kindly advise me whether or not the entire expense of Fallon County in arrest-

ing and prosecuting Burkholder may be charged against the money received from the sale of the trucks, or if Section 11552.2 provides only for the deduction of the expense of keeping the property and the cost of the sale. In other words, can the cost of the arrest and trial of the said Burkholder be considered as a lien against the proceeds received from the sale of the trucks in question?

Section 11552.2, R. C. M., 1935, provides:

"The officer making the sale, after deducting the expenses of keeping the property and the cost of the sale, so far as the balance of sale proceeds permit, shall pay all liens, according to their priorities, which are established by intervention or otherwise in said proceedings, as being bona fide and as having been created without the lien or having any notice or reasonable cause to believe that the vehicle was being or was to be used for such illegal transportation, and shall pay the balance of the proceeds to the treasurer of the State of Montana, to be credited to the livestock commission fund."

The costs of arrest and trial are not a lien against the truck nor can they be classed as "expense of keeping the property" or "cost of the sale." Since Section 11552.2 expressly provides what costs may be deducted from the sale proceeds we are not permitted to read into it other costs not mentioned therein.

We are therefore of the opinion that the costs of the arrest and trial, in the absence of statute authorizing it, may not be deducted from the sale proceeds of confiscated trucks.