

No. 28

**SHERIFF—LIVING QUARTERS IN COUNTY JAIL—
RENOVATING AND REDECORATING SAME UN-
LAWFUL CHARGE AGAINST COUNTY**

Held: Where Sheriff occupies living quarters in county jail, the redecorating and renovating same is not a lawful charge against county.

February 19, 1941.

Mr. Edison W. Kent
County Attorney
Granite County
Philipsburg, Montana

Dear Mr. Kent:

You have submitted the following:

"Where County Commissioners have provided the Sheriff with living quarters in a part of the county jail, and these quarters need repairing to make the same habitable, may the County Commissioners do the repairing at county expense or should the Sheriff repair the same at his own cost?"

We find that Chapter 117, Revised Codes of Montana, 1935, provides in Section 12466 as follows:

"12466. A jail must be built in each county. There must be built or provided and kept in good repair in each county one common jail, at the expense of the county, at the county seat."

Section 12468 provides for the use of a county jail and by whom it is to be kept, as follows:

"12468. County jails, by whom kept and for what used. The common jails in the several counties of this State are kept by the Sheriffs of the counties in which they are respectively situated and are used as follows:

1. For the detention of persons committed in order to secure their attendance as witnesses in criminal cases.
2. For the detention of persons charged with crime and committed for trial.

3. For the confinement of persons committed for contempt, or upon civil process, or by other authority of law.
4. For the confinement of persons sentenced to imprisonment therein upon a conviction of crime."

Section 12469 provides for the required rooms in each county jail as follows:

"12469. **Rooms required in county jails.** Each county jail must contain a sufficient number of rooms to allow all persons belonging to either one of the following classes to be confined separately and distinctly from persons belonging to either of the other classes:

1. Persons committed on criminal processes and detained for trial.
2. Persons already convicted of crime and held under sentence.
3. Persons detained as witnesses, or held under civil process, or under imposing punishment for a contempt.
4. Males separately from females."

"One who asks payment of a claim against a county must show some statute authorizing it or that it arises from some contract express or implied which finds authority of law. In other words . . . no officer of the county can charge it with the payment of other claims, however meritorious the consideration, or whatever may be the benefit the county may derive from them."

20 C. J. S. 1052.

"No usage in regard to making such charges can legalize them without (a statute authorizing them)."

46 C. J. 1018.

"We think the true rule is that if the recipient of county money cannot point to some law authorizing him, by reason of his official or contractual relation with the county, to receive such money, the board allowing his claim against the county is liable therefor under the . . . statute . . ."

Pima County v. Anklam et al., 61 Pac. (2nd) 172 (Ariz.)

Section 4865 of the Revised Codes of Montana, 1935, provides:

"4865. **What officers to receive fees for their own use.** The County Surveyor, Coroner, Public Administrator, Justice of the Peace, and Constable may collect and receive for their own use, respectively, for official services, the fees and emoluments prescribed in this chapter. All other county officers receive salaries."

The question of any emolument to a Sheriff was settled by our Supreme Court in the following case in commenting on the last above section as follows:

"This last sentence, saying that 'all other county officers receive salaries,' is pregnant with meaning, being unnecessarily put into that section, unless it is there placed from an abundance of caution, to let the people know that certain county officers receive salaries, and that the words 'fees and emoluments' are not to include in their scope and meaning the word 'salary,' and that salaried officers are not to have 'fees and emoluments' other than salaries from the state or county . . ."

"The object of the Legislature was to have certain services performed for the people, and not to make money for a Sheriff or to set him up in business. The old idea of paying an officer was to feed him and clothe him and take care of his family, while he was giving his services to the people. There never was any idea that holding public office was a private business. The purpose of the people is to make its officers whole, not to enrich them. The salary is to pay the officer for his time and services."

Scharrenbroich v. Lewis & Clark Co., 33 Mont. 250, 257, 83 Pac. 482.

And quoting from Pacific Coal Co. of Silver Bow County, as follows:

"If the Sheriff should have this food prepared outside the jail for service to the prisoners, as he would have a right to do, it could not be successfully argued that he would be required to expend the full amount of his per diem fee for the raw food alone, and in addition thereto pay the cost of fuel and expense of preparation. As a legitimate part of the cost of such food he would be entitled to take into consideration the item of fuel and other expense of preparation. If, on the other hand, the Sheriff should avail himself of the facilities provided in the jail for cooking food for prisoners, he would likewise be entitled to take into consideration the same items; that is, in either event, in computing the amount of his expenditures for board of the prisoners, he would be entitled to include the necessary cost of preparing the same, so as to make it suitable for consumption.

"The Sheriff's fee for providing the 'board' or 'food' is the amount specified in Section 4886. Under this section he is not entitled to anything further. To hold that the county is required to pay a part of the Sheriff's expense in furnishing such board would be equivalent to allowing him compensation in addition to that provided by law. **This the county cannot be permitted or required to do. What is not by law imposed as expenses upon a county is not a charge against it.** (Wade v. Lewis and Clark County, 24 Mont. 335, 61 Pac. 879; Sears v. Gallatin County, 20 Mont. 462, 40 L. R. A. 405, 52 Pac. 204.) (Emphasis mine.)

"A consideration of Sections 12482 and 4886, above referred to, impels us to the conclusion that the clear intent is that the fee provided for in Section 4886 is intended to cover the total amount of the county's liability for the furnishing of board to prisoners confined in the county jail and that it is not entitled or permitted to make any further or additional expenditures for that item. It therefore follows that the action of the Board of County Commissioners in refusing to allow the claim of the respondent for coal furnished to the Sheriff and used by him in preparation of the food which he was required to furnish the prisoners confined in the county jail for the fee named in Section 4886 was correct, and that the district court was in error in holding otherwise."

Pac. Coal Co. v. Silver Bow Co., 79 Mont. 323, 326, 256 Pac. 386.

I find no authority or warrant in law for a charge against the county for renovating, redecorating or any other such charge or charges for maintaining living quarters for a Sheriff in a county jail. It is therefore my opinion that such a charge is not a proper charge against a county, and, if paid, it may be recovered from those authorizing the same.

Sincerely yours,

JOHN W. BONNER
Attorney General