

No. 359

SHERIFFS—REWARDS—CRIMINAL LAW—FUGITIVES

Held: Where escaped criminal from another state is apprehended by a Montana sheriff when not performing official duty, sheriff may retain reward paid by bondsmen in other state.

February 16, 1942.

Mr. Seth G. Manning
County Attorney
Wibaux County
Wibaux, Montana

Dear Mr. Manning:

In the situation you present it appears the bondsmen in another state have paid a reward to your sheriff for the capture of a person who was convicted of robbery in that state. You inquire whether the sheriff may keep the reward or must put it in the county general fund.

The only statutory prohibition against sheriffs receiving rewards in Montana is Section 4483, Revised Codes of Montana, 1935, which reads as follows:

"The board of county commissioners of each county has the power to offer rewards for the apprehension and conviction of any person or persons who have committed any felony within their respective counties. Said reward shall not exceed the sum of five hundred dollars for the apprehension and conviction of the party or parties guilty of a felony, and the reward shall not be paid in any case until a conviction has first been had in said case. All rewards shall be paid by warrants drawn on the general fund of the county. In no case shall the members of the board of county commissioners, sheriff, or other county officer receiving an annual or monthly salary, be entitled to any part of such reward."

The principle is well established, however, as a general matter of incompatibility, and on consideration of public policy, an officer cannot lawfully receive, or recover, a reward for the performance of a service which it is his duty to discharge. 23 R. C. L. 1126, Section 16 (See note 11 and authorities cited.)

In similar cases it has been held a reward could be paid to a public officer under such circumstances.

In *Davis v. Munson*, 43 Vt. 676, 5 Am. Rep. 315, it was held a deputy sheriff, who had in his own county arrested a person who had broken jail in another county, was entitled to a reward for the capture of the prisoner.

In *Harris v. Moore*, 11 Pac. 780, 70 Cal. 502, a recovery was allowed. The Court said:

"As the plaintiff had no legal duty to perform, by virtue of his office of deputy-sheriff, in regard to discovering the evidence and causing it to be produced, having no writ to execute and the offense having been committed and the trial had out of his county, we do not think that the policy of the law forbade his receiving the compensation."

In *Smith v. Vernon County*, 188 Mo. 501, 87 S. W. 949, it was held a policeman of a municipality in one state is not, by reason of his official position, precluded from claiming and recovering a reward offered by the authorities of another state for the apprehension of a fugitive from justice whom he arrested on his own initiative, and at his own expense and hazard, without being under any duty to do so.

It does not appear, in the case submitted by your sheriff, any warrant or requisition had been presented for the arrest of the fugitive.

On this theory that the act of apprehending the criminal was not a part of the official duty of the sheriff and under the authority of the foregoing cases, it is my opinion the sheriff is entitled to the reward.

Sincerely yours,

JOHN W. BONNER
Attorney General