

No. 513

**STATE BUREAU OF CRIMINAL IDENTIFICATION—
COUNTY—CLAIMS**

Held: The Legislature having failed to make any appropriation for the functioning of the State Bureau of Criminal Identification and Investigation, the said Bureau is inoperative until the Legislature makes the necessary appropriation.

November 23, 1942.

Mr. Frank J. Roe
County Attorney
Silver Bow County
Butte, Montana

Dear Mr. Roe:

I am in receipt of your letter of November 13, 1942, together with the file, in which you request my views concerning a claim presented by Mr. Dudley Jones, Montana State Prison, against Silver Bow County, for "Photographs and Fingerprints of Incoming Inmates and Inmates being Discharged and Paroled or by Commutation of Sentence . . ." It is my understanding the criminal records were furnished the sheriff of Silver Bow County in order that he might keep his files up to date. You ask whether or not such claim is a proper and legal charge against the county.

In the view I take, the claim may be disposed of under Chapter 116 of the Penal Code, Volume 5, Revised Codes of Montana, 1935. The chapter provides for the creation of the State Bureau of Criminal Identification and Investigation. Section 12465.3 provides:

"Duties of superintendent of bureau. The superintendent shall procure and file for record photographs, pictures, descriptions, finger prints, measurements and such other information as may be pertinent, of all person who have been or may hereafter be convicted of felony within the state, and of all well-known and habitual criminals from wherever procurable, and it shall be the duty of the person in charge of any state institution to furnish any such material to the superintendent of the state bureau of criminal identification upon request of the superintendent. **The superintendent shall cooperate with and assist sheriffs, chiefs of police and other law officers in the establishment of a complete state system of criminal identification and in obtaining finger prints and other means of identification of all persons arrested on charge of felony.** He shall also file for record the finger print impressions of all persons confined in any work-house, jail, reformatory, or penitentiary, for the violation of state laws, and such other information as he may receive from law enforcement officials of the state and its subdivisions." (Emphasis mine.)

Section 12465.6 provides:

"Instruction to be given local bureaus. It shall be the duty of the superintendent to afford assistance and, when practicable, instruction to sheriffs, chiefs of police and other law officers in the establishment of efficient local bureaus of identification in their districts and in making them proficient in procuring finger print records."

Section 12465.8 provides:

"Appropriations for bureau to be made by legislature. The state legislature shall make the necessary appropriations for the purpose of paying the expenses necessary to carry into effect and operation the said bureau and to maintain and operate the same."

An examination of Chapter 116, and particularly those sections quoted, discloses an intention of the legislature to create and maintain a "complete state system of criminal identification." It contemplates mutual assistance between the superintendent of the state bureau and the local officers for the identification and investigation of persons charged with felony. Section 12465.4 makes it the mandatory duty of a sheriff and local officers, on the arrest of any person for a felony, to immediately take his finger prints and forward the same to the superintendent of the state bureau. Section 12465.3 makes it the duty of the superintendent to file such records, and requires him to cooperate with and assist the local officers in the establishment of a state system of identification, and "in obtaining finger prints and other means of identification of all persons arrested on charge of felony." Section 12465.8 requires the legislature to appropriate sufficient funds for paying expenses of maintaining and operating the state bureau.

It is my opinion the legislature evidenced in Chapter 116, Volume 5, Revised Codes of Montana, 1935, an intention to establish and maintain, at state expense, a state bureau of criminal identification and investigation, and it was not the intention of the legislature that the mutual services required of the superintendent and local officers should be the basis of claims against either the state or county or other subdivision.

Since the legislature, however, has failed to make any appropriation for the functioning of the state bureau of criminal identification and investigation, the bureau is inoperative until the legislature makes the necessary appropriation.

Sincerely yours,

R. V. BOTTOMLY
Attorney General