

**Opinion No. 49****Sheriffs — Prisoners, Boarding of — Federal Prisoners, Subsistence of**

- Held:**
- 1. Chapter 103, Laws of 1949, increasing the amount the sheriffs receive for boarding prisoners does not repeal Section 12472.2, Revised Codes of Montana, 1935, which provides for the amount the sheriff shall receive for subsistence of Federal Prisoners in his custody.**
  - 2. Chapter 103, Laws of 1949 is a general statute and Section 12472.2 is a special statute on the same subject and a general statute will not repeal a special statute by implication unless the intention of the legislature that the special statute be repealed is clearly manifested.**

Sept. 6, 1949.

Mr. Charles B. Sande  
County Attorney  
Billings, Montana

Dear Mr. Sande:

You have requested an opinion as to whether Chapter 103, Laws of 1949 repeals Section 12472.2, Revised Codes of Montana, 1935.

Chapter 103, Laws of 1949, amends Section 4886, Revised Codes of Montana, 1935, as amended by Chapter 77, Laws of 1943. Section 1 of Chapter 103 is as follows:

"Section 4886. Fees for Board of Prisoners. The fees allowed Sheriffs of the several counties of the state for the Board of Prisoners confined in jail under their charge shall be at the rate of one dollar and fifty cents (\$1.50) per day for each said prisoners, when the number of prisoners shall be ten (10) or less each day. When the number of prisoners per day shall exceed ten (10) and be less than twenty (20) then at the rate of one dollar and thirty-five cents (\$1.35) per day for each and all of said prisoners; when the number

of prisoners per day shall exceed twenty (20) and be less than thirty (30) then at the rate of one dollar and twenty-five cents (\$1.25) per day for each and all of said prisoners; when the number of prisoners per day shall exceed thirty (30) and be less than forty (40) then at the rate of one dollar and ten cents (\$1.10) per day for each and all of said prisoners, and, when the number of prisoners per day shall exceed forty (40) then at the rate of ninety cents (90c) per day for each and all of said prisoners."

Section 12472.2, *supra*, is as follows:

"Provision and agreement for use of county jails for federal prisoners. Provision and agreement for the use of said jails and the support and subsistence of each federal prisoner shall first be made by the United States through or by the proper officer or officers, with the Board of County Commissioners of the county wherein such prisoners are to be confined, such agreement to be in writing and contain a provision that the United States shall, upon claim presented for the county by its County Clerk and Recorder, pay into the county treasury of the county the sum of one dollar (\$1.00) per day for each and every prisoner held in the county jail upon order for any department or officer thereof. The Sheriff of the county, who has custody of such prisoners, shall be paid by the County for their support and subsistence at the rate of seventy-five cents (75c) per day, per prisoner.

You state in your letter that from an equitable and practical standpoint there should be no difference in the rate of pay paid to the Sheriff whether a county prisoner or a federal prisoner is concerned or involved, and that the passage of Chapter 103, *supra*, by the legislature indicates that the Legislature was cognizant of the rising prices in our economic system and thereby passed Chapter 103 so as to compensate the Sheriff at a reasonable rate.

I most certainly agree that the keeping of a federal prisoner is just as expensive as the keeping of a county prisoner and that Chapter 103 was passed in view of the present high cost of living. However, in determining the amount to be paid to a Sheriff for subsistence of federal prisoners Section 12472.2, *supra*, must control unless it can be held to be repealed.

It is clear that Section 12472.2 is a special statute and Section 4886, as contained in Chapter 103 is a general statute on the subject of the boarding of prisoners. Section 4886, as amended, provides generally for "prisoners confined in jail under their charge" and Sec. 12472.2 is a special statute relating only to federal prisoners and providing for the amount the sheriff shall receive for the support and subsistence of such federal prisoners.

If Chapter 103 does repeal Section 12472.2 it must be said that it does so by implication. Chapter 103 does not specifically repeal Sec-

tion 12472.2. Chapter 103 does contain the usual legislative catch-all repeal clause, to-wit:

"All acts and parts of acts in conflict herewith are hereby repealed."

In speaking of such a clause the Supreme Court of Montana in the case of *State ex rel. Charette v. District Court*, 107 Mont., 489, 86 Pac. (2d) 750 at page 424 said:

"Chapter 175 carries the usual repealing clause. We do not believe that the legislature, by the passage of this chapter, intended to repeal Chapter 10. There was certainly no express repeal of Chapter 10 by specific reference to it, since no mention is made of the Chapter in either the title or body of the Act. The repealing clause does not operate as an express repeal of Chapter 10. Courts in general, in speaking of these repealing clauses, have held that they add nothing to the repealing effect of the Act of which they are a part, as without the clause all prior conflicting laws, or parts of laws, would be repealed by implication. Their chief purpose seems to be to limit the extent of the repeal effected by the Act to those laws, or parts of laws, which are actually inconsistent with the Act."

The question of repeal by implication has been before the Supreme Court of Montana on many occasions and the general rule has become well established that repeals by implication are not favored. *State ex rel. Dunn v. Ayers*, 112 Mont. 120, 113 Pac. (2d) 785, *State v. Schnell*, 107 Mont. 579, 88 Pac. (2d) 19, *Wher v. Dye*, 105 Mont. 347, 73 Pac. (2d) 209.

The above stated general rule applies to the ordinary case wherein it is contended that a statute is repealed by implication.

Where the situation consists of the implied repeal of a special statute by a general statute, such as we have here, the rule is even more stringent. The rule in such a situation as set forth in 80 Am. Jur. Statutes, Section 564, Pages 565-6, is as follows:

". . . It is, however, equally true that the policy against implied repeals has peculiar and special force when the conflicting provisions, which are thought to work a repeal, are contained in a special or specific act and a later general or broad act. In such case, there is a presumption that the general or broad law was not designed to repeal the special or specific act, but that the special or specific act was intended to remain in force as an exception to the general or broad act, and there is a tendency to hold that where there are two acts, one special or specific act which certainly includes the matter in question, and the other a general act which standing alone would include the same matter, so that the provisions of the two conflict, the special or specific act must be given the effect of establishing an exception to the general or broad act. Hence, it is a canon of statutory construction that a later statute

general in its terms and not expressly repealing a prior special or specific statute, will be considered as not intended to affect the special or specific provisions of the earlier statute, unless the intention to effect the repeal is clearly manifested or unavoidably implied by the irreconcilability of the continued operation of both, or unless there is something in the general law or in the course of legislation upon its subject matter that makes it manifest that the legislature contemplated and intended a repeal. . . ."

The Supreme Court of Montana has also ruled on this precise point and in the case of *Equitable Life Assurance Co. v. Hart*, 55 Mont, 76, 173 Pac. 1062, the court quoted and approved the following passage from Sutherland on Statutory Construction:

"Unless there is plain indication of an intent that the general Act shall repeal the special, the latter will continue to have effect and the general words with which it conflicts will be restrained and modified accordingly."

Also in the case of *State ex rel. Charotte v. District Court*, supra, the court held a general act on a given subject will not, without express words of repeal, ordinarily repeal a previous special act.

In view of the canon of construction that a general statute will not impliedly repeal a special statute unless such be the manifest intention of the legislature, I conclude that in the present case Chapter 103, Laws of 1949 does not repeal Section 12472.2, Revised Codes of Montana, 1935. I do not observe anything in Chapter 103 that indicates an intention to repeal Section 12472.2.

It should also be noted that under Section 12472.2 the county is only authorized to expend the sum on one dollar (\$1.00) per day per prisoner when it contracts with the Federal Government for the care of Federal prisoners. Chapter 103 could not by any stretch of the imagination be interpreted to increase the sum which the legislature authorizes the county to pay the Federal Government and certainly if the county can get only one dollar (\$1.00) a day from the Federal Government it would be absurd to interpret Chapter 103 to mean that the county must pay the Sheriff one dollar and fifty cents (\$1.50) per Federal prisoner when the total prisoners were less than ten, as in such case the county would be losing fifty cents (50c) per day per Federal prisoner. Assuredly such a situation was not in the contemplation of the legislature.

It is unfortunate that the Legislature did not amend Section 12472.2 as undoubtedly seventy-five cents (75c) per day is not sufficient in these times to provide adequate subsistence for such federal prisoners. I recommend that this condition be called to the attention of the legislative assembly so that Section 12472.2 can be amended so Sheriffs will receive an equitable sum for caring for federal prisoners.

It is therefore my opinion that Chapter 103, Laws of 1949, providing for the amount Sheriffs receive for boarding prisoners does not repeal

Section 12472.2, Revised Codes of Montana, 1935, providing specifically for the subsistence allowance a Sheriff is to receive for caring for federal prisoners.

Very truly yours,  
ARNOLD H. OLSEN,  
Attorney General.