

**Opinion No. 45**  
**Fish and Game Commission — Costs**  
**of Prosecution—Hospital and Med-**  
**ical Expenses—Fish and Game**  
**Law Violators**

HELD: The hospital and medical expenses of a convicted violator of the Fish and Game laws serving sentence in lieu of fine are not proper charges against the Fish and Game fund as costs of prosecution.

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December 20, 1955.

Mr. W. J. Everin, Deputy Director  
Department of Fish and Game  
Sam W. Mitchell Building  
Helena, Montana

Dear Mr. Everin:

You have requested my opinion as to whether it is proper to charge the Fish and Game fund for the hospitalization and medical expenses of a prisoner incarcerated in county jail after conviction for violation of the Fish and Game laws in Montana. You advise that the prisoner was hospitalized by the county authorities while he was serving out his fine in lieu of payment therefor.

If any authority exists for the payment of such expenses, it is contained in Section 26-1002, R.C.M., 1947, herein set forth:

"Payment Of Cost Bill To County Wherein Costs Were Incurred. In all cases where there is a prosecution for the violation of fish and game laws, and costs have been incurred therein, a cost bill shall be prepared, including the cost of board of prisoners, and presented to the state board of examiners, and if by them allowed, the state treasurer shall thereupon pay the same out of the state game and fish fund to the county treasurer of the county wherein such costs were incurred."

If the expense claimed is regular, it must be considered a proper part of the cost bill for criminal prosecutions. The section above states that the costs incurred in the prosecution, and in addition, the board of prisoners shall be paid from the fish and game fund after being allowed by the State Board of Examiners.

The law is well settled that the state is not liable for costs in any action, civil or criminal, except where specifically authorized by statute, further that the statute is subject to the most narrow and strict interpretation. 20 C.J.S. 688, § 442; *State v. Amsden*, 86 Or, 55, 167 Pac. 1014.

The question then arises is this expense a proper one to be taxed as a cost of prosecution. Generally speaking, a cost bill in criminal cases includes any legal and proper costs of prosecution and trial after filing of the information (complaint), including the costs and expenses of investigation and production of evidence.

*Rosebud County v. Flinn*, 109 Mont. 537, 541, 98 Pac. (2d) 330.

The term prosecution includes all steps from the filing of the information until the judgment is rendered.

The hospitalization and medical expenses are not a cost of prosecution, either by statute or otherwise.

Therefore it is my opinion that the hospital and medical expenses of a convicted violator of the Fish and

Game laws serving sentence in lieu of fine are not proper charges against the Fish and Game fund as costs of prosecution.

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