

Opinion No. 32

**SHERIFFS, Duties, liability for prisoner released under court order—
PRISONERS, liability of sheriff for prisoner released under court
order—Chapter 249, Laws of 1959, Sec. 94-7835, RCM, 1947**

**Held: A sheriff who releases a prisoner under a court order pursuant
to the provisions of Chapter 249, Laws of Montana, 1959, incurs
no liability for injuries or damages to the prisoner or injuries or
damages caused by the prisoner paroled under this act.**

October 9, 1959

Mr. John C. Harrison
Lewis and Clark County Attorney
Helena, Montana

Dear Mr. Harrison:

You have requested my opinion regarding two questions that have arisen under the "Work Release Plan" enacted as Chapter 249, Laws of 1959. These questions are:

1. Would the sheriff incur any possible liability to the prisoner for injuries or damages which the prisoner might suffer while he is outside of the jail working under this plan.
2. Would the sheriff incur any possible liability to persons who might be injured or otherwise damaged by the prisoner while he is outside of the jail working under this plan.

Section 94-7835, Revised Codes of Montana, 1947, sets forth the procedure for the administration of this act and provides:

"A **court**, after having sentenced a person to confinement in a county jail, **may**, in its discretion, upon request of the county attorney and sheriff of such county, and with the consent of the convicted person, **order** that any part of the imprisonment so imposed be served in confinement, with parole during the hours or periods the convicted person is actually employed." (Emphasis supplied.)

It is clear from a reading of this section that the only way a prisoner may be actually released from the confines of the county jail is through a court order. It is a well settled rule of law that the "process, judgment, or order of a court having apparent jurisdiction, if valid on its face, affords complete protection to a sheriff or constable from liability for any proper or necessary act done in its execution." 80 C.J.S., Sec. 122(a).

In the case of *Struble v. Barger*, 128 Colo. 188, 261 Pac. (2d) 497, the rule defining the duties and liabilities of a sheriff was set forth in the following manner:

"A sheriff is an executive officer of the court, charged with the duty of carrying out orders and decrees of the court, not with deciding the truth or sufficiency of processes committed to him, and a sheriff who obeys order of a judge is not civilly liable for so doing."

It is therefore my opinion that a sheriff who releases a prisoner under a court order pursuant to the provisions of Chapter 249, Laws of 1959, would incur no liability for injuries or damages to the prisoner or injuries or damages caused by the prisoner paroled under this plan.

Very truly yours,
FORREST H. ANDERSON
Attorney General