

VOLUME NO. 34

Opinion No. 30

PRISONERS - Cost of boarding; COUNTY JAILS - Prisoner, cost of boarding; STATE - Appropriations; HIGHWAY PATROL - Cost of boarding prisoners. Section 31-115, R.C.M. 1947.

- HELD:**
- 1. Expenses for the cost of boarding prisoners incarcerated for violating state highway laws must be borne by the state of Montana pursuant to section 31-115, R.C.M. 1947.**
 - 2. Expenses for the cost of boarding prisoners incarcerated for violating state highway laws may not be deducted from any fines, fees, or forfeitures imposed upon those persons before the transmittal of such funds to the state treasurer.**

December 29, 1971

Mr. Kenneth L. Haag
Dawson County Attorney
Glendive, Montana 59330

Dear Mr. Haag:

I am in receipt of your letter concerning payment for the cost of boarding prisoners incarcerated for violations of the state highway laws and regulations. Generally, the question may be phrased as follows:

“Whether the highway patrol, on whose behalf a prisoner is detained in a county jail, is responsible for the cost of the board of such prisoner while he is detained?”

Section 31-115, Revised Codes of Montana, 1947, provides:

“The court, after deducting all costs and fees, shall immediately transmit the balance of said fine to the state treasurer as provided by law. The expenses of the county,

except fees of officers who are paid a regular salary, shall constitute a proper claim against the state of Montana and **said claim or claims shall be paid in the manner provided by law out of the funds appropriated for such purposes.**" (Emphasis supplied)

A reading of this section shows that the legislature did not intend for the counties to bear the expense of boarding prisoners incarcerated for violations of the state highway law. (See: 34 **Opinions of the Attorney General**, no. 24, and 17 **Opinions of the Attorney General**, no. 197.)

An ancillary problem must be considered. Several of the county attorneys have asked whether the expense for board of prisoners may be deducted from the fines, fees and forfeitures collected before said fines, fees and forfeitures are transmitted to the state treasurer for deposit.

Section 31-115, *supra*, again provides in part:

"The court, **after deducting all costs and fees**, shall immediately transmit the balance of said fine to the state treasurer . . ." (Emphasis supplied)

The legislature permitted "costs and fees" to be deducted prior to transmittal of the fines, fees and forfeitures to the state treasurer. "Costs and fees" have been interpreted to mean justice of the peace fees, fees of jurors and witnesses, and fees for service of process. (See: 17 **Opinions of the Attorney General**, no. 197.) The expenses of the county, however, are treated differently in section 31-115, *supra*:

". . . The expenses of the county, except fees of officers who are paid a regular salary, shall constitute a proper claim against the state of Montana and **said claim or claims shall be paid in the manner provided by law out of funds appropriated for such purposes.**" (Emphasis supplied)

This portion of section 31-115, *supra*, permits the county expense to be paid **only** out of the funds appropriated for such purposes and, therefore, the county expenses may not be deducted from the fines, fees and forfeitures prior to their transmittal to the state treasurer. (See: 17 **Opinions of the Attorney General**, no. 197.)

Section 31-115, *supra*, was originally enacted as section 15, Chapter 199, Laws of 1943, and has remained unchanged since that time. Specific line item appropriations were made to the highway patrol by

the legislature for the payment of board of prisoners during the bien-nium in 1955, 1957, 1959 and 1967. Many of the other legislative sessions appropriated money for deficiencies incurred by the highway patrol due to the lack of sufficient funding to meet the obligation imposed by section 31-115, supra. Although the forty-second legisla-tive assembly did not appropriate a line item amount for the board of prisoners it did appropriate a sufficient amount to the highway patrol field services program to cover a reasonable amount of county expenses which are properly submitted. The highway patrol contemplated pay-ment of these county expenses for board of prisoners as evidence by their budget justification submitted to the state controller prior to the commencement of the forty-second legislative assembly. The budget justification called for \$14,075.00 to be appropriated for "board of prisoners" in 1971 and \$16,920.00 for 1972. A slight decrease was recommended by the governor to the legislature in the agency category (including board of prisoner item) but the legislature gave a slight increase over the recommended level of the governor. It should also be noted that the legislature has access to the budget justifications when determining the appropriations. In the final analysis, although the highway patrol did not receive all the money requested in the budget justification, they did receive a percentage thereof and, therefore, should have moneys available to pay for proper county expenses pur-suant to section 31-115, supra.

THEREFORE, IT IS MY OPINION that:

1. The expense for the boarding of prisoners incarcerated for vio-lation of the state highway laws is a proper expense that must be borne by the state of Montana pursuant to section 31-115, R.C.M. 1947.
2. The expense for the boarding of prisoners incarcerated for vio-lation of state highway laws may not be deducted from the fines, fees or forfeitures collected from persons apprehended or ar-rested for violation of the state highway laws, prior to the trans-mission of said fines, fees and forfeitures to the state treasurer.

Very truly yours,

ROBERT L. WOODAHL
Attorney General