

**Opinion No. 47-5069**

August 21, 1947

**BY:** C. C. McCULLOH, Attorney General

**TO:** Mr. J. P. Cusack Assistant District Attorney Fifth Judicial District Roswell. New Mexico

{\*80} This will acknowledge receipt of your letter of August 19, 1947 in which you request the opinion of this office on the following statement of facts:

The Sheriff of Chaves County has a contract with the Federal Government to feed Federal prisoners at a flat rate of One Dollar and Twenty-five cents per day per man.

Question: Is the Sheriff of Chaves County entitled to keep this money in the Sheriff's Office, or must he turn the money over to the County Commissioners to be disposed of by them?

Section 45-214, New Mexico Statutes, 1941 Compilation, provides that it shall be the duty of the sheriff of each county to receive federal prisoners and keep them safely until they shall be placed at liberty. This section also provides that the United States government shall be responsible {\*81} for the pay of the **subsistence** and **jail fees** of such prisoners.

Section 15-4111 New Mexico Statutes, 1941 Compilation, as amended by Chapter 13, Laws of 1947, provides that the allowance to be paid for feeding prisoners shall be the actual cost and shall not exceed One Dollar (\$ 1.00) per day.

Section 15-4112, New Mexico Statutes, 1941 Compilation, provides that no county officer shall receive to his own use, or for or on account of his office, any salary, compensation, allowance, fees or emoluments in any form whatsoever other than authorized by law.

Section 1, Article X of the New Mexico Constitution provides in part as follows:

\* \* \* "No county officer shall receive to his own use any fees or emoluments other than the annual salary provided by law, and all fees earned by any officer shall be by him collected and paid into the treasury of the county."

It is my understanding that this money paid by the federal government is not merely pay for food supplied prisoners but for the guarding, housing and general maintenance and care as well. I note also that general supplies for the jail are furnished through county funds (Section 45-208, New Mexico Statutes, 1941 Compilation), no money being expended personally by the sheriff.

In view of the constitutional provision and statutes above quoted, I am of the opinion that any compensation received by the Sheriff of Chaves County by contract from the federal government for the care and maintenance of federal prisoners cannot be retained by him but must be paid over by him not to the County Commissioners but to the treasury of the county. Of course, the sheriff is then entitled to an allowance from the general county fund for the actual cost of feeding the prisoners, not to exceed One Dollar (\$ 1.00) per day.

By: WM. R. FEDERICI

Asst. Atty. General