

Opinion No. 53-5832

October 29, 1953

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Edward M. Hartman State Comptroller State Capitol Building Santa Fe, New Mexico

{*248} This is in reply to your request for an opinion on the question of whether or not § 15-4111, N.M.S.A., 1941 Comp., as amended, Laws 1947, Ch. 13, Sec. 1, requires County Commissioners to make payments in stated sums for cost of feeding jail prisoners and guards at quarterly intervals, or whether they may be permitted to make such payments on earlier intervals such as monthly.

The Section in question reads as follows:

"15-4111. COST OF FEEDING JAIL PRISONERS AND GUARDS -- LIMITATION -- PAYMENT -- SHERIFF'S DOCKET. -- The actual cost of feeding jail prisoners and guards shall be paid quarterly out of the general county fund of the several counties of the state, but in no event shall the amount paid exceed one dollar (\$ 1.00) per day for each prisoner and guard. Provided: No accounts for the feeding of prisoners and guards shall be paid unless the same are fully itemized and verified by the sheriff, and approved by the board of county commissioners; provided further, that the sheriff shall keep a docket showing the exact time of confinement and release of each prisoner, and that the allowance for feeding of prisoners shall be based on actual meals served. {*249} (Laws 1915, ch. 12, § 5, p. 24; 1919, ch. 125, § 1, p. 270; C.S. 1929, § 33-3205; Laws 1947, ch. 13, § 1.)"

The original Act, Laws 1915, Ch. 12, from which the above section was derived, bore the title "An Act Relating to County Officers", and Section 5 therein was the same as above, with the exception that Laws 1919, Ch. 125, amended this to insert guards as well as prisoners, substituted the fund from which the payment was to be made, and raised the amount per day. The 1947 amendment merely raised the amount per day to that stated above and added the last proviso. The titles to the 1919 and 1947 amendments provided for amendment to existing statute relative to Counties and County Officers, and added "and fixing costs of feeding jail prisoners and guards".

It appears from the title to the Act that the Legislature intended by this law to set the amount payable by the County Commissioners for the feeding of jail prisoners and guards, and the time of such payment to be made does not appear in the original title or amendments.

The question, therefore, is simply, does the word "shall", as appears, require such payment to be made at exact quarterly periods, or may the County Commissioners make such payments sooner or later?

You have not raised the point in your request of the effect of payments made after the quarterly period, so we shall here confine ourselves to consideration of payments made at earlier times than that stated in the statute.

It is an accepted principle of law that, in the absence of other considerations, the use of the word "shall" in a statute, standing alone without modification, generally connotes a mandatory construction, **Louisville & N. Ry. Co. v Hammer**, 236 S.W. 971, but this does not mean that in every case it shall be given a mandatory construction, but it may also be subject to a directory construction, **State ex inf Taylor ex re Bogelt v. Pretent**, 240 S.W. 2nd 946, 3 Sutherland on Statutory Construction, Sec. 5816, (3rd Edition 1943). Even in the absence of ambiguity, the word "shall" is subject to statutory construction as to whether it is mandatory or directory. **Ballou v. Kemp**. 68 App. D.C. 7, 9 F. 2nd 556, **Horad v. Yee**, 82 A. 2nd 916.

In the case of **International Brotherhood etc. v. Shapiro**, 82 A. 2nd 345, the Supreme Court of Connecticut had this to say in construing a statute that required that an Administrative Board "shall" enter an order within 15 days of the completion of a hearing, at page 350:

"In determining whether a statute is mandatory or directory, the most satisfactory and conclusive test is whether the prescribed mode of action is of the essence of the thing to be accomplished, or in other words whether it relates to matter of substance or to matter of convenience. *Gallup v. Smith*, 59 Conn. 354, 22 A. 334, 12 LRA 353."

The Court further stated that statutes should be construed to secure prompt dispatch of business and where affirmative language was employed and not negative or prohibitive language, the statute would be construed as directory rather than mandatory. **Pingree v. State Court of Mediation**, 130 Mich. 229, 89 N. W. 943. Also see **People v. Gibbs**, 108 N.E. 2nd 446, **Miller v. State**, 232 P. 2d 658. (Wherein the word "shall" is so construed.)

It is a matter of common knowledge {*250} that ordinary business practice requires that groceries and other necessities of life are generally billed upon 30 day periods. The general principle of statutory construction in such matters is that where the statute in question in some manner offends the beneficial public interest, or fails to achieve the purpose for which it was adopted, there is a presumption against a construction that would render the statute ineffective or inefficient or which would cause grave public injury or even inconvenience. 82 C.J.S. 545, **Beals v. Ares**, 25 N.M. 459.

It is, therefore, the opinion of this office that the statute in question does not limit the authority of the County Commissioners to make more frequent and more convenient payments for the feeding of prisoners and guards than at quarterly intervals, and that payment upon monthly periods would not subject them to any accusation that they are in violation of the law.

We hope that this is of some assistance to you in this matter.

By: William J. Torrington

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