

## Opinion No. 54-5928

March 29, 1954

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. C. N. Morris Assistant District Attorney Fifth Judicial District Carlsbad, New Mexico

{\*374} You have requested the opinion of this office upon the question of whether the County Commissioners are liable for hospital and medical expenses of a prisoner in the County Jail.

There is no provision in our law placing any responsibility directly and specifically upon the County Commissioners or their agents to provide medical care and hospitalization to prisoners in County Jails. Under § 45-204, N.M.S.A., 1941 Comp., as amended, there is a general duty of sheriffs and persons having custody of prisoners to see that they are clean and properly cared for. Under this section of the law and the general duties of custody, the counties throughout the State have a policy of obtaining medical assistance for prisoners needing the same and who are unable to pay for such services, and paying for these out of the County Indigent Fund. Such funds can, of course, only be expended upon indigent persons {\*375} within the limitations of § 73-201, et seq., N.M.S.A., 1941 Comp. The opinion of this office rendered January 14, 1936, Opinion No. 98, held that indigent funds could be spent for medical care. In Opinion No. 1141 of this office, dated December 17, 1913, wherein § 45-205, N.M.S.A., 1941 Comp., was under consideration, the Attorney General ruled that this statute required:

"The general rule of law is that, when a sheriff has imprisoned a human being, 'he is bound to exercise ordinary and reasonable care under the circumstances of each particular case for the preservation of the life and health of such prisoner.'"

Section 45-205, N.M.S.A., 1941 Comp., under which this opinion was written, appears as follows, as it was then in effect:

"The Sheriff of each county, under the superintendence of judge of probate thereof, shall provide the jail of his county with all necessary things, as wood, candles, kitchen furniture and irons, etc., and shall also provide food for each prisoner, for which purpose he shall be allowed the sum of fifty cents per day for each one he may have to provide therewith, the expense of which shall be paid out of the county treasury, the same being submitted to and approved by the probate judge. Laws 1965-1866, Ch. 19, Sec. 11.)"

In 1884, the Compiled Laws substituted the words "County Commissioners" for "Probate Judge", and the 1915 Code deleted all wording in the sections commencing and including "etc." through and to "herewith". The above opinion, although construing the meaning of "etc.", would still be applicable and in point.

It is, therefore, the opinion of this office that Sheriffs and persons charged with custody of county prisoners should make available medical care, where necessary, for prisoners out of funds available in the indigent fund of the county, if in fact such persons are indigent within the provisions of our laws, and, if such prisoners are not indigent persons but have such means to provide for their own expenses, the county is not liable for such expense. It should be made clear that where a person has sufficient funds to pay medical expenses and is not indigent, the contract of care should be between the sick person, or his authorized representative, and the person rendering the services.

We trust this will be of some assistance to you in this matter.

By: William J. Torrington

Assist. Attorney General