

Opinion No. 63-142

October 25, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Board of County Commissioners of Torrance County County Court House Estancia,
New Mexico

QUESTION

QUESTIONS

1. Section 15-43-14.1, N.M.S.A., (Supp. 63) provides that the County Sheriff must verify bills for feeding prisoners and the bills must then be approved by the Board of County Commissioners before they are paid. In what manner should the sheriff present his bill for feeding prisoners and what does verification encompass?
2. What per diem rate should be paid to the County Sheriff?
3. May the County sheriff bill the county for the rental of a motor vehicle to go out of state to pick up a prisoner if he takes such action without prior approval of the County Commissioners?
4. Must a County Sheriff verify the telephone bills of his office before County Commissioners may approve payment of the bills?
5. What control does the Board of County Commissioners have over payment of hospital bills for prisoners which the Sheriff has taken to the hospital?
6. Does the County Commission have any control over the sheriff with respect to the manner in which he permits prisoners to have freedom during the term of their confinement for an offense?

CONCLUSIONS

1. See analysis.
2. See analysis.
3. No.
4. The Board may require the sheriff to itemize and verify telephone bill before it authorizes payment.
5. See analysis.

6. In some instances, but see analysis.

OPINION

{*320} ANALYSIS

Section 15-43-14.1 (Supp. 1963) states that expenditures shall be made monthly from the county general fund for the actual expense of feeding prisoners. In all instances the expenditure is subject to a statutory maximum established by Section 15-43-14.1. This section provides that no accounts shall be paid unless they are fully itemized and verified. The same requirement existed in the prior statutory section. See Section 15-43-14, N.M.S.A., (1953). Under the prior section this office, in Opinion No. 184, 1931-32, said that the sheriff should set down in detail the amounts expended for groceries, fuel, salaries of cooks and other expenses that might be incurred in feeding prisoners and guards. The purpose of this itemization is to permit the account to be examined and its correctness tested. We enclose a copy of Opinion 184, 1931-32 for your use because we think it applies to the situation you pose.

Blacks Law Dictionary defines "verification" as:

"Confirmation of correctness, truth, or authentic; by affidavit, oath, or deposition."

This definition has been adopted by the Supreme Court of New Mexico in **Home Plumbing and Contracting Company v. Pruitt**, 70 N.M. 182, 372 P.2d 378 (1962). We are therefore of the opinion that the itemized statement presented by the sheriff should be followed by a written statement by the sheriff under oath that he is the sheriff, has read the statement and it is true. It should be subscribed and sworn to before a notary public.

Your second question refers to the per diem rate to be paid to the County Sheriff. In Attorney General's Opinion No. 63-111 this office determined that the amount of per diem payment to county sheriffs is dependent on the purposes of his travel. The approval of the payment comes from different sources again depending on the purposes of his travel. Since opinion No. 63-111 deals specifically with this problem in detail, we are enclosing a copy of that opinion in answer to your second question.

The only statutory provision which permits the county sheriff to use any mode of conveyance other than official vehicles or private vehicles is Section 15-40-21.2 (Supp. 1963). This section provides that the sheriff may utilize "public transportation" in the performance of his official business. A similar term, "public conveyance," has been construed by our Supreme Court to mean "common carrier". **Fairchild v. United Service Corporation**, 52 N.M. 289, 197 P.2d 875 (1948). We think this construction {*321} is applicable to the expression, "public transportation", as it is used in Section 15-40-21.2 (Supp. 1963). The Supreme Court of New Mexico in **Roeske v. Lamb**, 39 N.M. 111, 41 P.2d 522 (1935), however, has held in a similar situation that a rental motor vehicle is not a common carrier.

On the other hand, the contract relationship between a rental agency and the lessee of a vehicle is in the nature of a bailment. It is the renting of a private vehicle for the use of the lessee and once the relationship is established the lessee has control over the vehicle. In this situation we are of the opinion that a rental vehicle is like any other private vehicle and the sheriff is entitled to use the same as he would a private vehicle. His expenses for the use of such a vehicle, however, would be subject to the approval of the Board of County Commissioners or the State Department of Finance and Administration depending on the use made of the vehicle. See Attorney General's Opinion No. 63-111.

In addition, all monies paid to the sheriff by the state for travel expenses, is subject to approval by the State Board of Finance. Laws of 1963, Chapter 115; Section 18, Chapter 287, Laws of 1963; Attorney General's Opinion No. 63-111.

Turning to the question about telephone bills we note that there is no statutory provision specifically requiring the sheriff to itemize or verify the bills before they are paid. The Board of County Commissioners, however, may be liable for any payments they order made if the payments are not authorized by law. Section 15-37-27.28, N.M.S.A., 1953. In addition the Board is required to publish the amount of the money expended by the county and the particular objects for which every sum of money has been expended. See Section 5-6-5, through 5-6-8 and 15-37-26, N.M.S.A., 1953. We are therefore of the opinion that the Board may require the sheriff to itemize and verify the telephone bills for his office in order for the Board to protect itself.

In answer to your question about the Board's control over payment for the hospital bills of prisoners we refer to Attorney General's Opinion No. 5928, 1953-54. That Opinion said that hospital and medical expenses for indigent prisoners may be paid from the county indigent fund. Prisoners who are not indigent, however, must pay their own medical expenses, and the contract of care should be between the prisoner or his authorized representative and the person rendering the services.

In answer to your last question we point out that the County Commissioners are the inspectors of the prisons in their respective counties. Section 42-2-3, N.M.S.A., 1953. That Section provides that the Commissioners shall visit the jail at least twice a year and inspect each cell as to cleanliness and discipline.

Black's Law Dictionary indicates that the word "discipline" connotes "correction, chastisement, punishment, penalty." We are of the opinion that the County Commissioners should make the determination of whether or not the Sheriff's policy regarding prisoner freedom amounts to an application of improper discipline. If the Board determines that such is the case, it should report the same to the District Court.

Supervision of the county jails is also a function of the grand jury. The grand jury's supervision overlaps that of the County Commissioners and in some respects is much broader. Pursuant to Section 41-5-15, N.M.S.A., (1953) the grand jury must inquire "Into the {*322} condition and management of the public prison in the county:" Therefore

if the objections to the operation of the prison come within the area of discipline or cleanliness the Board of County Commissioners should exercise their supervisory powers; otherwise the supervision would be the function of the grand jury.

By: Wayne C. Wolf

Assistant Attorney General