

## Opinion No. 66-122

November 9, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General Myles E. Flint, Assistant Attorney General

**TO:** Mr. Victor C. Breen, District Attorney, 10th Judicial District, P. O. Drawer BB, Tucumcari, New Mexico

### QUESTION

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1. Is a sheriff, who receives funds for the care of prisoners, prohibited from using trustees in his care as cook in the preparation of food?
2. Is this operation a private enterprise which would prohibit the use of prisoners?

#### CONCLUSIONS

1. No.
2. No.

### OPINION

#### {\*164} ANALYSIS

Section 15-43-14.1, N.M.S.A., 1953 Compilation (P.S.) provides as follows:

"PRISONERS AND GUARDS -- ALLOWANCE FOR FEEDING. -- A. Each county sheriff shall keep a written record showing the exact time of confinement and release of each prisoner incarcerated in the county jail. Allowed expenditures under subsection B shall be based on actual meals served.

B. Expenditures shall be made monthly from the county general fund to the sheriff for the expenses incurred in feeding prisoners and guards. In no event shall expended amounts exceed the following rates:

- (1) One dollar seventy-five cents (\$ 1.75) per guard per day;
- (2) One dollar seventy-five cents (\$ 1.75) per prisoner for the first five [5] prisoners per any one [1] calendar day;

(3) One dollar fifty cents (\$ 1.50) per prisoner for the second five [5] prisoners per any one [1] calendar day; and

(4) One dollar (\$ 1.00) per prisoner per calendar day for all prisoners over ten [10] in number.

C. No accounts for feeding prisoners and guards shall be paid unless they are fully itemized and verified by the sheriff and approved by the board of county commissioners."

This section and its predecessor have been considered in prior opinions. {<sup>\*165</sup>} Opinion of the Attorney General No. 184, 1931-32; Opinion of the Attorney General No. 65-44. In each of those opinions, although no specific reference was made to your first question, it was stated that the sheriff could make the arrangements necessary for caring for prisoners. The statute is silent as to the specific means to be used; however, it is our opinion that the method to be followed by the sheriff is left to his discretion. He may take the reasonable steps necessary to fulfill these duties.

In answer to your second question, it is our opinion that this is not a private enterprise operation. Although, the term "private enterprise" is not a clear term, in this situation it appears that in providing for the care of the prisoners the sheriff is performing a statutory duty. Furthermore, as was stated in Opinion of Attorney General No. 65-44, the sheriff is to be reimbursed only for his actual expenses. Therefore, there is no profit to be derived from the operation. The sheriff overseeing this governmental operation, is not engaged in private enterprise.