

Opinion No. 22-3442

May 20, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. Richard A. Toomey, Clayton, New Mexico.

Payment Expense for Feeding County Prisoners and Serving Civil Process Out of Interest on Deposit Fund.

OPINION

{*154} In reply to your letter of the 9th instant, received in this office on the 13th instant, making certain inquiries concerning the payment of expenses for feeding of prisoners in excess of the amount provided for in the county budget, and also for the payment to the sheriff of expenses incurred in serving civil process, both out of the county interest on deposit fund, notice of which fund was not taken in the said budget, I wish to advise:

In my opinion the moneys in the interest on deposit fund may be used to pay for excess expenses incurred in the feeding of prisoners, which expense exceeds the amount provided for in the county budget because of there being more prisoners confined in the jail than were provided for in the said budget.

You state in the second proposition suggested that the sheriff is charging 12 1/2 cents a mile for services rendered in connection with the serving of civil process and that the actual expense of serving such process is in excess of said 12 1/2 cents per mile, and inquire if this excess may be paid out of the moneys in the said interest on deposit fund.

In many of the counties sheriffs have been charging persons requiring the services of that official in the serving of civil process actual expenses incurred and while there is doubt as to whether such fees are legally provided for by law, such procedure has saved the county large sums which necessarily must be paid by the county if the expenses incurred in such service are in excess of the 12 1/2 cents per mile provided for by Section 1270, Code 1915.

It has been suggested that Section 3, Chapter 12 and Chapter 42, Laws 1915, impliedly repeal that part of Section 1270, which provides for mileage of 12 1/2 cents per mile for sheriffs, in connection with the service of process.

I would suggest that your sheriff be instructed to charge actual expenses incurred by him in the service of civil process for private suitors.

I believe, however, that moneys in the county interest on deposit fund could be used to pay expenses incurred by sheriffs in serving civil process in excess of 12 1/2 cents per mile authorized by the above mentioned statute.