

Opinion No. 38-2034

August 25, 1938

BY: FRANK H. PATTON, Attorney General

TO: Mr. Felipe Sanchez y Baca United States Marshal Santa Fe, New Mexico.
Attention: Mr. Antonio F. Chavez Chief Deputy

{*265} We have your letter enclosing inquiry from the Federal Bureau of Prisons as to statutes with reference to charges by county Sheriffs for the feeding of federal prisoners.

The statutes listed in the letter from the Bureau of Prisons are still in our statute books, and none others have been enacted. The two statutes mainly pertinent to your inquiry are Section 3046 of the 1915 Code (Section 75-114, New Mexico Statutes Annotated, 1929 Compilation), and Chapter 125, Laws of 1919, (Section 33-3205, New Mexico Statutes Annotated, 1929 Compilation).

However, let me call your attention to the fact that the subsistence charges authorized and limited by the latter section are paid to the Sheriff to cover the food furnished and does not include any compensation to the county for the use of its jail and the services of its salaried sheriff; and that the first statute above referred to requiring the taking in and feeding of prisoners provided the United States "shall be responsible for the pay of their subsistence **and jail fees**" was enacted over seventy-five years ago when New Mexico was still a territory, and when the sheriff's fees and probably the upkeep of the jail were raised by fees. In view of that fact, it would seem that the keeping of prisoners for the Federal Government could and should be fixed by agreement between the County Commissioners and the Government at such {*266} sum as would fairly compensate the county for the service rendered.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.