

Opinion No. 42

COUNTY COMMISSIONERS; Powers; sheriff's residence, authority to provide—COUNTY JAILS; sheriff's residence in close proximity to jail—SHERIFFS; Residence; county jail, residence in authorized—Sections 16-1001, 16-2702 and 16-2822, Revised Codes of Montana, 1947

Held: The County Commissioners may in their discretion provide quarters for the sheriff in close proximity to the jail if they require him to be available for duty twenty-four hours per day.

November 12, 1959

Mr. Douglas R. Drysdale
Gallatin County Attorney
Bozeman, Montana

Dear Mr. Drysdale:

You have requested my opinion whether the county commissioners may provide quarters for the sheriff if the county commissioners require him to be available for duty twenty-four hours per day.

The sheriff is the chief county law enforcement officer and among his duties are to preserve the peace, make arrests and to take charge of and keep the county jail and prisoners therein (Section 16-2702, RCM, 1947). In this capacity the Gallatin county commissioners require the sheriff to be available for duty twenty-four hours per day.

The board of county commissioners has supervision over the official conduct of all county officers (Section 16-1001, RCM, 1947) and has general supervision over the county jail (Section 16-2822, RCM, 1947).

The board of county commissioners in addition to the specific powers granted to it by law has all the powers necessary for the proper execution of duties specifically delegated to it by statute (Arnold v. Custer County, 83 Mont. 130, 269 Pac. 396).

The question that you have presented has never been decided by the Montana Supreme Court but similar questions have been determined by several former Attorneys General of Montana. These opinions

have held that the purchase of automobiles for general county purposes was a proper expenditure (Volume 14, Opinion No. 10; Volume 23, Opinion No. 120). Similarly a board of county commissioners may authorize payment of storage charges for a court reporter's automobile if they find such payment is necessary for a convenient and proper discharge of the county business (Volume 16, Opinion No. 196). County funds may properly be expended for a telephone in the residence of a deputy sheriff (Volume 17, Opinion No. 17) and it is permissible for the sheriff and county commissioners to budget for and expend money for the acquisition and maintenance of uniforms for the sheriff and his deputies (Volume 28, Opinion No. 13).

Questions regarding the sheriff's residence have been discussed in three prior Attorney General's opinions. These opinions are not in agreement but the latest of these opinions written by Attorney General L. A. Foot in Volume 12, Page 51, is in agreement with the conclusion reached in this opinion. Attorney General Foot said:

"It is the duty of the sheriff to safely keep in the county jail prisoners committed to his charge, and he is answerable for the performance of that duty . . . It is entirely possible that the supreme court might hold that in view of the above duty imposed on the sheriff, it is compatible with the performance of such duty that he should occupy rooms adjoining the county jail, and that his family should not be separated from him while he is engaged in the discharge of said duty."

It is also to be noted that the sheriffs of Montana have been furnished quarters by the counties for many years. This practice has never been questioned or objected to by the legislature. The interpretation of a statute by the authorities charged with its execution is generally considered authoritative, especially when the legislature, by its inaction, has sanctioned that construction for a long period of time. (Miller Insurance Agency vs. Porter, 93 Mont. 567, 20 Pac. 2d 643).

It is therefore my opinion that the county commissioners may in their discretion provide quarters for the sheriff in close proximity to the jail if they require him to be available for duty twenty-four hours per day.

Very truly yours,
FORREST H. ANDERSON
Attorney General