

OFFICIAL OPINION NO. 78-36, Sheriff's collection of fees

September 8, 1978

Mrs. Ruth Humphries
Brown County Auditor
Aberdeen, South Dakota 57401

Official Opinion No. 78-36

Sheriff's collection of fees

Dear Mrs. Humphries:

You have requested an opinion from this office based upon the following factual situation:

FACTS:

On June 21, 1978, the county sheriff received a teletype message from the Auditor General's Office stating:

REFERENCE, THE INFORMATION ON SDCL 7-12-18 CORRECTION ON THE MESSAGE:

Because the many counties in the State are identical and there may be ways to comply with SDCL 7-12-18 as amended, we require that as a minimum the following criteria be implemented:

1. Sheriff maintains an accurate record of all fees charged.
2. Sheriff submits a listing of fees charged to the county auditor on a timely basis.
3. County auditor bills for the fees charged and maintains an accounts receivable record.
4. County treasurer receives a listing of fees billed by the auditor.
5. Treasurer collects money and provides county auditor with appropriate information.

On July 14, 1978, a workshop was held in Pierre, which was conducted by the Auditor General's Office and the Department of Revenue. Chapter 58 of the 1978 Session Laws was on the agenda. We were both specifically informed by the Auditor General's Office that everything under section 7-12-18 was to be billed by the county auditor's office and collected by the county treasurer's office pursuant to Chapter 58 of the 1978 Session Laws.

In Brown County, the county and the City of Aberdeen have a written agreement that the County will handle all City prisoners. The City of Aberdeen then reimburses the sheriff for the boarding of the city prisoners, admission and release fees, and miscellaneous fees. Subsection (27) of section 7-12-18 refers to board of prisoners.

I also asked the Auditor General's staff about work release for prisoners, referring to Chapter 184 of the 1978 Session Laws. We were told yes, we have to bill for this and the treasurer collects the money.

Based on these facts you ask the following questions:

QUESTIONS:

1. Does the county auditor bill the City of Aberdeen for the board of prisoners plus all other fees, and then reimburse the sheriff for the board of prisoners only? And also, does the same question refer to federal prisoners, AWOL's and other agencies?
2. Brown County owns three parking lots within the city limits of Aberdeen, with an ordinance stating the rules and regulations. After two hours free parking they are in violation of the ordinance and are ticketed and must pay a fine to the sheriff's office. Does the county auditor now have to bill for all violations? According to the Auditor General's Office we do, as I asked this question of their attorney.
3. Does the county auditor bill for work release prisoners and the county treasurer collect the money?
4. Does the county auditor bill for permits for pistols that the sheriff's office issues?
5. Sheriff's collection on bonds for warrants of arrest. Does the county auditor bill for this and the county treasurer collect the bond money? If the answer is yes, how is this to be

administered for arrests made during other than normal business hours?

6. Sheriff's execution to levy upon property and notice of levy? Does the county auditor bill for the actual execution of levy for collection of debt owing and does the county treasurer collect money for the levy and forward it to the proper department?

Section 2 of Chapter 58 of the 1978 Session Laws reads as follows:

Section 2. That chapter 7-12 be amended by adding a new section thereto reading as follows:

Any person who is charged any fee and traveling expenses by a sheriff shall make payment to the county treasurer including, but not limited to, the fees provided in § 7-12-18.

The thrust of Chapter 58 of the 1978 Session Laws is to prevent the fees and traveling expenses therein described from being collected by sheriffs in that manner that would make it possible for them personally to control the use and disposition of the funds. It is my opinion that the amendments enacted in Chapter 58 do not, for example, prohibit a sheriff from receiving a check made payable to the county treasurer which would include payment for fees enumerated in SDCL 7-12-18. These amendments do, however, prohibit a sheriff from taking cash or a check made to him as payee, for collection of any of these fees. The same logic also applies in regard to payment of mileage allowances.

It is worth noting here that the scope of Chapter 58 extends only to the collection of special fees and mileage allowances; not to the broad area of receipt and collection of property being processed by the sheriff to satisfy existing and enforceable judgments or liens. In this regard the Legislature has focused on a specific area, not on a broad restructuring of the sheriff's role in collecting and enforcing judgments and liens according to existing statutory procedures.

In implementing the billing relationship between the county auditor, the county treasurer, and the functions of the sheriff's office under Chapter 58, it appears to me that the Auditor General is granted substantial discretion pursuant to SDCL 7-10-2 to prescribe a uniform accounting procedure. Thus, I would agree with the Auditor General in that everything under SDCL 7-12-18 was to be collected by the county treasurer's office and be billed by the county auditor's office. As expressed, however, this does not mean that the county

treasurer cannot receive, through the sheriff, a check made out and payable to the county treasurer for collection of the fees prescribed by 7-12- 18. Also, it would appear to me that this would not require the billing by the county auditor's office of such fees which became due and which were paid. There would, however, appear to be a necessity for a coordinated system that would enable the county sheriff, county auditor and county treasurer to be aware of what fees and mileage allowances are due and owing to the county under § 7-12-18 so that the officers charged with billing and collecting the moneys can have a uniform system as well as creating a workable audit trail for purposes of the State Auditor General's Office.

In view of the above, I do not believe that it is necessary to specifically deal with each of your questions independently, except to state that reference your fourth question, the answer is no. (See SDCL 23-7-7.)

Respectfully submitted,

William J. Janklow
Attorney General

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