

Sheriff

Sheriff has authority to buy necessary supplies for jail but not for court house unless ordered to do so by county court.

January 4th
1935



Mr. Thomas Gaines,
Sheriff of Howard County,
Fayette, Missouri.

Dear Sir:-

We have your letter of November 26, 1934, in which is contained a request for an opinion as follows:

"I would like to ask your opinion on a point of law regarding my office. Who, in your opinion, has the authority to do the buying of supplies such as insecticide, germicide, soaps, etc. for the county jail and court house? I would appreciate hearing from you at your convenience."

Section 8526, Revised Statutes of Missouri, 1929, provides in part as follows:-

"Sec. 8526. Who shall be jailer.--The sheriff of each county in this state shall have the custody, rule, keeping and charge of the jail within his county, * * *."

Under the above section the sheriff is empowered to purchase necessary supplies for use in the jail. For instance, in the case of Kansas City Sanitary Co. v. Laclede County, 269 S. W. 395, the Supreme Court of Missouri, at page 398, stated as follows:

"Under section 12549 the jail is required to be kept in good and sufficient condition and under section 12551 the sheriff has the custody, keeping and charge of the jail. He, therefore, has full authority to purchase all supplies necessary to keep such jail in good and sufficient condition, which includes sanitary condition, and needed no authorization by the county court to render the county liable for purchases for such jail for such purpose. Harkreader v. Vernon County, 216 Mo. 696; 116 S. W. 523."

The sections referred to are the same sections as sections 8524 and 8526, Revised Statutes of Missouri, 1929.

January 4, 1935.

For purchases for use in the court house, however, a different situation arises, the county court having control thereof.

Section 2078, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 2078. Shall Control County Property.--
The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

Section 1870, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 1870. Duties of Sheriffs.--The several sheriffs shall attend each court held in their counties, except where it shall otherwise be directed by law; and it shall be the duty of the officer attending any court to furnish stationery, fuel, and other things necessary for the use of the court whenever ordered by the court."

The Supreme Court of Missouri in the case of Kansas City Disinfecting & Mfg. Co. v. Bates County, 273 Mo. 300, passed squarely on this question. In that case Judge Faris stated, at pages 305-6, as follows:

"It is not doubted that the statutes (Secs. 1571 and 1573, R. S. 1909) and the construction thereof by this court in a case to an extent analogous (Harkreader v. Vernon County, 216 Mo. 696) furnish authority to a sheriff of a county to purchase such articles and supplies as are requisite and necessary to keep and maintain the county jail 'in good and sufficient condition and repair.' But such authority, absent an order of the county court, which might pro hac vice make him its agent, would not extend to purchases made for the poor house or the poor farm, the custody and control of which are vested by statute in the county court, and not in the sheriff. (Sec. 1343, R. S. 1909). Likewise, the county court is by statute vested with the control of the

January 4th, 1935.

court house (Sec. 4081, R. S. 1909) and while it is made the duty of the sheriff 'to furnish fuel, stationery and other things more necessary for the use of the court' (Sec. 3887, R. S. 1909), this duty is delimited by the appended provision directing performance thereof 'whenever ordered by the court.' (Sec. 3887, supra.) This latter conditional duty is disassociated from control of the premises and is a general one which the sheriff owes to the circuit court, to the probate court, and even to the county court itself, though the latter court is the general statutory contracting, auditing and fiscal agency of the county. Clearly, such an order should either be express, or plainly implied from the necessities of the situation."

Sections 4081 and 3887, Revised Statutes of Missouri, 1909, referred to in the above quotation, are substantially Sections 2078 and 1870, Revised Statutes of Missouri, 1929, respectively.

In view of the above it is our opinion that the sheriff can purchase for the jail but not for the court house. If the jail is in the court house the sheriff may purchase supplies for use only in that part of the court house devoted to use as a jail.

Very truly yours,

CHAS. M. HOWELL, Jr.
Assistant Attorney General

CMHJr:LC

APPROVED:

Attorney General.