

SALARIES: City of St. Louis is entitled to all fees and mileage paid by State Auditor for transportation of prisoners to Penitentiary under Section 13413, R. S. Mo. 1939.

FEES:

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Honorable Paul Dillon
Attorney-at-Law
907 Bank of Commerce Bldg.
St. Louis, Missouri

Dear Sir:

The Attorney General acknowledges receipt of your letter in which an official opinion was requested and which reads as follows:

"I am attorney for the Sheriff of the City of St. Louis and am confronted with the following problem concerning which I would like your official opinion.

"It has been the practice of the Sheriff of the City of St. Louis in taking prisoners from St. Louis to the Missouri State Penitentiary to act as follows:

"He awaits until sufficient prisoners have accumulated so as to justify having a car for just the prisoners. This car is provided by the Missouri Pacific Railroad which transports the prisoners and Guards from St. Louis to Jefferson City and advances in cash \$2.75 to each Guard or Deputy Sheriff for his expenses not including his railroad fare for the trip. The prisoners are delivered to the penitentiary and a receipt taken for them. The receipt is then presented to the State Auditor's Office which draws a check, made payable to the City of St. Louis, and the Sheriff turns the same over to the Sheriff's Office which holds said check until the Sheriff receives a bill from the Missouri Pacific and when he does he draws a check payable to the Missouri Pacific for that bill and deposits the difference in the Sheriff's Office account. There has now arisen a question as to who is entitled to the amount paid by the State Auditor over the actual amount paid the

Missouri Pacific, which is the entire cost of transportation of the prisoners. The City of St. Louis contends that it is entitled to this amount. I do not know just how the Auditor comes to pay this bill but, if he pays it as he does, I believe he is entitled to this overpayment. However, I will be guided by your official opinion and wish you would let me know so I can inform the Sheriff as soon as possible."

Chapter 145, R. S. Mo. 1939 contains the laws especially applicable to the City of St. Louis. Article 1 pertains to the Sheriff and Coroner, and Section 15671 of said article, in part, provides as follows:

"All general laws relating and applicable to the sheriffs and coroners of the several counties of this state shall apply to the same officers in the City of St. Louis,* * *"

Section 13413, R. S. Mo. 1939, provides for certain fees to be allowed sheriffs and other officers, and that portion of Section 13413, relating to fees allowed in connection with transporting prisoners to the State Penitentiary, provides:

"* * *For the services of taking convicts to the penitentiary, the sheriff, county marshal or other officer shall receive the sum of three dollars per day for the time actually and necessarily employed in traveling to and from the penitentiary, and each guard shall receive the sum of two dollars per day for the same, and the sheriff, county marshal or other officer and guard shall receive five cents per mile for the distance necessarily traveled in going to and returning from the penitentiary, the time and distance to be estimated by the most usually traveled route from the place of departure to the penitentiary; the sum of five cents per mile for each mile traveled, while being taken to the penitentiary, shall be allowed to the sheriff to cover all expenses of each convict while being taken to the penitentiary; and all persons, convicted and sentenced to imprisonment in the penitentiary at any term or setting of the court, shall be taken to the penitentiary at the same time, unless prevented by sick-

ness or unavoidable accident. In cities having a population of two hundred thousand inhabitants or more, convicts shall be taken to the penitentiary not oftener than twice in any one month. When three or more convicts are being taken to the penitentiary at one time, a guard may be employed, but no guard shall be employed for a less number of convicts except upon the order, entered of record, of the judge of the court in which the conviction was had, and any additional guards employed by order of the judge shall, in no event, exceed one for every three prisoners; and before any claim for taking convicts to the penitentiary is allowed, the sheriff, or other officer conveying such convict, shall file with the state auditor an itemized statement of his account, in which he shall give the name of each convict conveyed and the name of each guard actually employed, with the number of miles necessarily traveled and the number of days required, which in no case shall exceed three days, and which account shall be signed and sworn to by such officer and accompanied by a certificate from the warden of the penitentiary, or his deputy, that such convicts have been delivered at the penitentiary and were accompanied by each of the officers and guards named in the account. * * *

Under the above section, the sheriff of the City of St. Louis would have a claim against the State Auditor for the necessary fees and mileage for himself, the guards employed, and the prisoners, legitimately incurred and allowed under the statute each time a group of prisoners is transported to the Penitentiary, and we assume that each time the sheriff transports prisoners to the Penitentiary, he files a true and correct itemized sworn statement with the State Auditor, giving the name of each convict conveyed, names of guards employed, number of miles necessarily traveled, and number of days required, and that he also submits the proper certificate, signed by the Warden of the Penitentiary, as is required by the statute.

The only time the state would be entitled to recover money paid in connection with the transportation of prisoners to the Penitentiary would be in the case where a payment was made in excess of the amount authorized by law, or where there was an unauthorized payment. The rule was stated in the case of Nodaway County v. Kidder, 344 Mo. 795, 129 S. W. (2d) 857, l.c. 861:

"* * *'As a general rule any compensation paid to a public official by the state or other governmental body not authorized by law, or in excess of the compensation authorized by law, may be recovered by the proper governmental body * * *.' 46 C. J. 1030, Sec. 285."

In the case at bar it does not appear that an excessive or unauthorized payment was ever made.

In the City of St. Louis the sheriff, his deputies and assistants, are compensated for their services by salary paid by the City. All fees earned by the sheriff are turned over to the City. Thus, it is provided in Section 15672, R. S. Mo. 1939, which, in part, reads:

"All fees earned by the sheriff of the City of St. Louis during any calendar month, shall be paid into the treasury of the city of St. Louis on or before the 10th day of the next succeeding calendar month. He shall keep a complete itemized account of all such fees, and of all expenses incurred by him in the discharge of the duties of his office. * * *"

While the fees earned by the sheriff are to be paid into the Treasury of the City of St. Louis, Section 15677, R. S. Mo. 1939 further provides that the necessary expenses incurred by the sheriff in connection with the conduct of his duties shall be paid by the City.

CONCLUSION

It is, therefore, the opinion of this department that under Section 13413, R. S. Mo. 1939, certain fees and mileage are allowed in connection with the transportation of prisoners to the State Penitentiary, and when the same is paid by the State Auditor, based upon the sheriff's itemized sworn statement, the City of St. Louis would be entitled to the entire amount paid by the State Auditor which would include any amount remaining after the bill that was submitted by the railroad company is paid.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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