

IN RE: CONVICTS TO PENITENTIARY: INTERPRETATION OF SECTION
11791 R. S. Mo. 1929.

June 15, 1933. ⁶⁻²⁰



Hon. Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Mr. Smith:

This department is in receipt of your letter of June 14 in which you make the following request for an opinion from this office:

"We would be pleased to have an interpretation by your office upon the meaning of the following clause taken from Section 11791, R. S. Mo. 1929:

'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;'

"Following is the interpretation which this office has heretofore placed upon this part of the above statute:

- A. "If a Sheriff brings three prisoners to the penitentiary, he may employ a guard to come with him, without securing a court order. (One only).
- B. "If a Sheriff brings less than three prisoners (one or two), he may employ a guard to come with him, providing he first secure a court order. (One only).
- C. "If a Sheriff bring four prisoners

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he may employ one guard without an order, and, by securing an order, he may employ an additional guard. (Two in all).

- D. 'If a Sheriff bring five prisoners he may employ one guard without an order, and, by securing an order, he may employ an additional guard. (Two in all).
- E. 'If a Sheriff brings six prisoners, he may employ one guard without an order, and, by securing an order he may employ two additional guards. (Three in all).''

It is the opinion of this department that you are correct in your interpretation of the statute with respect to case A, case B, and case E.

However, we respectfully submit that, in case C and Case D, one guard only may be employed. Section 11791, R. S. Mo. 1929, provides in part: "*****and any additional guards employed by order of the judge, shall, in no event, exceed one for every three prisoners; *****". The statute allows a guard to be employed without order of the court when three or more convicts are being taken to the penitentiary at one time. However, before an additional guard may be employed, there must be at least three extra prisoners or six in all. If an additional guard were to be employed and there were only four or five prisoners in all, the provisions of the statute would then be violated in that there would be an additional guard and only one or two additional prisoners whereas the statute requires that there be three extra prisoners for each additional guard. The statute itself contemplates that one guard is sufficient for any number of prisoners from one to five in that it provides for one guard "when three or more convicts" are being taken to the penitentiary at the same time.

Therefore, in view of the foregoing it is the opinion of this office that, if there are one or two prisoners being taken to the penitentiary at one time, one guard may be employed if an order of the court to that effect is obtained; if there are three, four or five

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prisoners, one guard only may be employed, no order of the court being necessary; if there are six prisoners, one additional guard may be employed providing an order of the court to that effect is obtained, making two guards in all.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK
Attorney General

JWH/AJ