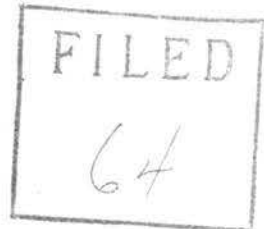


SHERIFF'S RESIDENCE - County court's duty in relation thereto.  
Sections 8524 and 8526, R. S. Mo. 1929.

February 17, 1933.



Hon. W. E. Montgomery  
Prosecuting Attorney  
Sullivan County  
Milan, Missouri

Dear Mr. Montgomery:

Your letter addressed to the Attorney-General requesting an opinion from this department, on behalf of the county court of your county, has been handed the undersigned for attention. In your request you state the following:

"I am writing you at the request of the Sheriff and the County Court of Sullivan County. The question has arisen as to whether the Sheriff of our County, under the present circumstances, is entitled to receive from the county his house rent, light and heat bills?"

For a number of years Sullivan County has not maintained a county jail. Our prisoners have been boarded out in the jails of other adjoining counties. In taking prisoners to and from these jails the Sheriff of Sullivan County has been allowed the statutory mileage rates and deputy hire when it was necessary. The question appears complicated only in this sense, for a number of years in the past the County Court of Sullivan County have allowed the Sheriff house rent and also his light and water bills and also his coal bill for his private dwelling. Occasionally the sheriff may keep and board a prisoner, who is a trusty, in his private home, but this is the exception rather than the rule."

Under the facts as given we understand your request to be as follows:- You are desirous of an opinion upon the question of whether or not it is incumbent upon the county court to furnish to the sheriff at the expense of the county a dwelling for the private occupancy of himself and family, and, in addition thereto to pay, in connection with such private occupancy, his fuel, light and water bills.

We are unable to find any statutory provision authorizing the county court to make an expenditure of the county funds for the purpose as designated. The courts uniformly hold that county courts are not the general agents of the county, or of the state; their powers are limited and defined by law. If the power to make such expenditure on behalf of the sheriff is not provided by statute, then, in order to justify such action upon the part of the county court, the authority would necessarily have to be implied as an essential and necessary expenditure by reason of the peculiar duties imposed upon the sheriff and which under the law he is required to perform.

Section 8524, R. S. No. 1929, provides as follows:

"There shall be kept and maintained, in good and sufficient condition and repair, a common jail in each county within this state, to be located at the permanent seat of justice for such county."

In the case of Markreader v. Vernon County, 216 Mo. 696, a sheriff brought suit against the county for his outlay of expenditure on behalf of said county to recovery for the following items: gas and water service in the county jail; stamps used in his official business and for janitor service in his office. The opinion in this case and the companion case of Ewing v. Vernon County, same report, p. 681, was written by Judge Lamm. It will be noted from a reading of these cases that a very liberal construction was given the statutory provisions, and a recovery was permitted upon the theory that the expenditures as made by the representative officials were necessary expenditures incident to the proper performance and discharge of official duties.

Section 8526, R. S. No. 1929, provides as follows:

"The sheriff of each county in this state shall have the custody, rule, keeping and

Hon. M. E. Montgomery #3

charge of the jail within his county, and of all the prisoners in such jail, and may appoint a jailer under him, for whose conduct he shall be responsible; but no justice of the peace shall act as jailer, or keeper of any jail, during the time he shall act as such justice."

Under Section 9524, supra, it is made mandatory upon every county to keep and maintain in good and sufficient condition and repair a common jail. If the sheriff of your county uses his residence as such jail, the county, of course, should pay the expense in connection therewith. It is permissible and sometimes necessary that the sheriff reside at the jail in order to at all times be in close proximity to the persons confined or incarcerated in that institution. If, upon the other hand, the residence is not so used, we are of the opinion that the county court would be unauthorized to pay for the rental of such residence, light, fuel and water used therein. The matter of occupancy, therefore, resolves itself into a question of fact to be determined by the county court.

Yours very truly,

CARL C. ABINGTON  
Assistant Attorney-General.

APPROVED: \_\_\_\_\_

ROY McKITTRICK  
Attorney-General.

OCA:EG