

COUNTY: Liability for Hospital expense as result of Sheriff's Act.

March 7, 1934

File No. 34



Hon. Harve G. Gray
Superintendent
Missouri Training School for Boys
Boonville, Missouri

Dear Sir:

We are in receipt of your letter dated February 24, 1934, which reads as follows:

"The Sheriff from Gentry County started to Boonville last December with Delmer Armstrong, happened to an automobile accident in which the Sheriff was badly hurt and the boy received a fractured left leg. Apparently he did not receive proper medical attention and this boy has been delivered to us with the bone lapped which will make him a cripple for life.

Question: Is it possible to compel Gentry County to bear the hospital expense of severing this bone and setting it properly in order to save this boy this physical defect?

I could see no way for me to refuse acceptance of this boy. While the Sheriff stated to me he had three doctors with him, the physical facts show the physicians were very deficient in skill in this kind of work. In case they did properly set the femur of this boy's leg, they failed to put him in a cast, so I understand, and the left leg is approximately four inches shorter than the right.

I am advised by our local physician that a possible result of the present condition of this boy's leg, is tuberculosis of the hip. For your further information will state that unless something is done, this boy will be compelled to serve practically all his time in the hospital because of his physical impairment."

Section 8357 R. S. Mo. 1929 reads as follows:

"In all cases of conviction of felony, wherein the punishment is commitment to the reformatory, the cost of the proceedings and of the delivery of such person to the reformatory shall be paid by the state; and in all cases of misdemeanor, wherein the punishment is commitment to the reformatory, the cost of the proceedings and of the delivery of such person to the reformatory shall be paid by the county in which the conviction is had. The sheriff, marshal or other person charged with the delivery of any person to the reformatory shall be allowed the necessary traveling expenses of himself and such person, and a per diem of two dollars for the time actually occupied in taking such person to said reformatory and in returning therefrom, to be paid by the state or county, as the case may be."

Section 8358 R. S. Mo. 1929, provides in part as follows:

"There shall be paid to the state prison board the sum of fifteen dollars per month for the support, maintenance, clothing and all other expenses of each person committed to said reformatory, from the time of his reception into said institution until his discharge therefrom: * * * Provided, that all payments for the support of persons chargeable to a county shall be paid by such county in cash, and for that purpose the county court is authorized to discount its warrants, but the Missouri reformatory (now known as the Missouri Training School For Boys, Laws of Missouri, 1933, Section 8345) shall not receive any county warrants for the maintenance and support of any person committed to such institution."

In Clark v. Adair County, 79 Mo. 537, the Court states:

"* * * Counties are territorial subdivisions of the State, and are only quasi corporations created by the legislature for certain public purposes. As such they are not responsible for neglect of duties enjoined on them or their

officers unless the right of action for such neglect is given by statute. Such has always been the law of this State.* * * * *

In Cassidy vs. City of St. Joseph, 247 Mo. 197, 1. c. 205; 152 S. W. 306, the Court states:

* * * Neither the State nor those quasi-corporations consisting of political subdivisions which, like counties and townships, are formed for the sole purpose of exercising purely governmental powers, are, in the absence of some express statute to that effect, liable in an action for damages either for the non-exercise of such powers, or for their improper exercise, by those charged with their execution. This applies alike to the acts of all persons exercising these governmental functions, whether they be public officers whose duties are directly imposed by statute, or employees whose duties are imposed by officers and agents having general authority to do so.* * *

CONCLUSION.

From the foregoing, we are of the opinion that the County is not liable for the hospital expenses of the boy in the absence of an express statement to the contrary, and there is no provision in our statutes providing for such a liability. We are further of the opinion that the words "and all other expenses" contained in Section 8358 R. S. Mo. 1929, includes all necessary hospital expenses for the safe being and welfare of this boy. The Sheriff was acting ministerially in pursuance of a provision of the statutes, imposing upon him the duty of delivering the boy to the custody of the Missouri Training School for Boys, and he fulfilled his duty by delivering the boy to that institution.

Respectfully submitted,

WM. ORR SAWWERS,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General.