COUNTY COURT - Working county prisoners - Discretionery - Wh
PRISONERS - - Compulsory. Prisoners subject to be worked -
type of work. Employment of Guards. Board of
Prisoners and liability therefor.

June 14th, 1934.

6-19

FILED
35

Honorable T. J. Harper
Prosecuting Attorney
Stone County
Galena, Missouri

Dear Sir:

We have your request of June 6th, 1934 for an opinion on the following facts:

> "If a prisoner, being held in jail, unable to give bond, is taken from the jail and kept on a farm for a period of days and is used as a laborer, then is later convicted in criminal court - Does the county or state stand responsible for a board bill during his absence from the jail?"

For the purposes of this opinion, we will subdivide it as follows:

I. Working County Prisoners.
   A. When Prisoners Number Less Than Ten - Discretionery.
   B. When Prisoners Number Ten or More - Compulsory.
   C. Prisoners Excepted From Work.
      (1) Those not convicted, but awaiting trial.
      (2) Females and persons incapable of manual labor.
      (3) Persons Convicted of Felony.

II. Contract For Working Prisoners.
   A. Period of Work - Duration of Time.
   B. Employment of Guards.
   C. Kinds of Work.

III. Board of County Prisoners.

Conclusion.

#2 - Honorable T. J. Harper

I.

WORKING COUNTY PRISONERS.

A - When Prisoners Number Less Than Ten - Discretionery.

Section 12114, Revised Statutes of Missouri, 1929, provides:

> "The county court of any county in this state may, in their discretion, order the sheriff or marshal to cause all such persons mentioned in the preceding section to be put to work and perform labor on the public roads, highways, turnpikes or other public works or buildings of such county for such purposes as they may deem necessary: * "

The above quoted part of the statute applies in all cases where the number of prisoners subject to work numbers less than ten. Under such circumstances, the county court may or may not work such prisoners, and the entire matter rests within the discretion of the county court.

B - When Prisoners Number Ten or More - Compulsory.

When there are ten or more prisoners capable of performing manual labor, not including those hereinafter excepted from work under I C of this opinion, it is the mandatory duty of the county court to provide work for such prisoners. Section 12114, Revised Statutes of Missouri, 1929, in part, provides:

> " *when there shall be confined in the jail of any county such persons to the number of ten or more, it shall be obligatory on the county court to cause all said persons, *

> to be worked as aforesaid, and to be kept at work during such period as they would otherwise be confined in the common jail of such county; * "

C - Prisoners Excepted From Work.

(1) Those not convicted, but awaiting trial.

Section 12113, Revised Statutes of Missouri, 1929, relating to the prisoners who may be worked, is limited to those under conviction. In part it provides as follows:

> "The county courts in this state are hereby authorized and empowered to cause all persons who have been convicted and sentenced, by a court of competent jurisdiction, for crime, the punishment of which is defined by law to be a fine, or by imprisonment in the county jail for any length of time, or by both such fine and imprisonment, or by fine and imprisonment until such fine be paid, to work on the public roads or break rock for macadamizing purposes; * "

The Legislature has therefore seen fit to limit the right of the county court to work prisoners, and to confine the forceful working of prisoners to those who have been convicted of crime, and have prior to the working, been sentenced. Section 12113, Revised Statutes of Missouri, 1929, also provides that the working of such prisoners shall be made a part of the sentence of the prisoner.

Some question may be raised as to when a person is convicted. In the event a person has been convicted and sentence pronounced, and an appeal has been taken, it may be urged that the appeal suspends the right of the county to work the prisoner in the event such prisoner is unable to give bond. In State v. Shelton, 284 S. W. 433; 314 Mo. 333, five judges of the Supreme Court held that a

person was convicted immediately upon the pronouncing of the sentence in the trial court and that an appeal did not, in any way, set aside or change the prisoner's status of being a convicted person.

(2) Females and persons incapable of manual labor.

Among the persons exempted from working, under Section 12114, are females. Section 12114, in part, provides:

> " *it shall be obligatory on the county court to cause all said persons, except females and except persons incapable of performing manual labor, to be worked * "

As to whether a person is capable of performing manual labor, the determination of such question is to be determined by the county court. However, it is the duty of the county court to make allowances for compensation for medical services given to prisoners. - Section 3840. Similar authority is also given to the sheriff or jailer to furnish the prisoners such medical attention as is necessary. - Section 8533. Therefore, in the determination of the physical fitness of any prisoner for work, the county court should be largely guided by the opinion of the attending medical officer.

(3) Persons convicted of felony.

Section 12112, Revised Statutes of Missouri, 1929, provides:

> "The county courts * shall have the power to provide for the employment,* of all persons convicted of misdemeanor * and who may be sentenced to imprisonment in the county jail, or who may be committed to the county jail for

nonpayment of fine; * "

Persons who have been convicted of a felony are exempted from the provisions of the above statute, and this is true even though the punishment for such felony may be imprisonment in the county jail. - State ex rel. v. Johnson et al (1909) 138 Mo. App. 306, l.c. 316.

II.

CONTRACT FOR WORKING PRISONERS.

A - Period of Work - Duration of Time.

Section 12112, Revised Statutes of Missouri, 1929, provides that the county court shall have the power to provide for the employment of prisoners,

> " *under such rules and regulations and under such terms as they may prescribe, * "

As heretofore pointed out, in Section 12114, supra, provision is made by the county court for the working of a prisoner as a part of the sentence. Said section, relating to the duration of such employment of prisoner, provides that such prisoner shall be worked,

> " *and to be kept at work during such period as they would otherwise be confined in the common jail of such county; * and the sheriff or marshal shall have power and is hereby required to have or cause all such persons as may be directed by the county court to work out the full number of days for which they may have been sentenced * and if the

> punishment be by fine and the fine be not paid, then for every dollar of such fine the prisoner shall work one day, and shall also work for such period of time as he would otherwise be required to remain in jail in order to be released from the payment of any costs in such case. * "

It may be urged that the working of a prisoner for one day for each one dollar of his fine is in conflict with Section 3859, which provides that such prisoners confined for the nonpayment of fine and costs shall not be imprisoned for more than one day for each two dollars ($2.00) of such fine and costs, with a limit of twenty days actual imprisonment for the nonpayment of costs in all cases where the prisoner is insolvent. A close examination of the two sections will reveal that it was the intention of the Legislature to limit the confinement of insolvent prisoners, when kept in jail one day for each two dollars ($2.00) of fine, and in no event could such prisoner be kept in jail for more than twenty days for the costs.

The mere confinement of a prisoner in jail, under Section 3859, does not in any way pay the fine or costs; there is only a limitation upon the time he may be imprisoned for his failure to pay such, because Section 3872 provides:

> "The estate, property and effects of such petitioner at the time of his discharge, and all he shall thereafter acquire, shall be liable to execution for the payment of such costs and expenses."

An insolvent discharged criminal is entitled to the statutory civil exemptions. - Betterton v. O'Dwyer (1907) 124 Mo. App. 306. The evident intent of the Legislature was, under Section 12114, that the working of a prisoner outside, in the open air, and under more healthful conditions, jus-

tified the working of prisoner one day for each one dollar($1.00) of his fine. Even though no change was made in the provision allowing the prisoner to discharge himself from imprisonment for costs upon the serving ofa maximum of twenty days for costs which amount to more than forty dollars ($40.00), or in the event the costs amount to less than forty dollars ($40.00), the prisoner may discharge himself from such imprisonment for costs by serving one day for each two dollars ($2.00) of costs. There is no conflict between the two above statutes. In Re: Joseph Lorkowski (1902) 94 Mo. App. 623.

B - Employment of Guards.

In order to effectively carry out the provisions for working prisoners, Section 12114 in part provides:

> "it is hereby made the duty of said county courts to employ a suitable guard or guards and to pay them reasonable compensation therefor out of the county treasury to take charge of such persons, receiving them from the sheriff or marshal of such county, and keeping them in custody * and such guards shall have full power and authority of a deputy sheriff to restrain and keep such prisoners in custody * "

C - Kinds of Work.

It appears to be the first intention of the Legislature that all such prisoners should be worked on public roads, highways, turnpikes or other public works or buildings in such county, but in the event that the county does not have such need for prison labor and where there are ten or

more prisoners subject to be worked in the county jail, then,

> " *the county court is authorized in its discretion to procure a lot of ground by purchase or rental at such place and of such size as they may select, and may authorize the sheriff or marshal to buy perch rock to be delivered on said lot; but such persons shall not be put at work breaking rock when they can be worked on the public roads and highways, turnpikes or other public works or builings of such county; * "

In the event that the prisoners are placed on road work, the county court may direct road overseers or road commissioners to superintend or direct the working of such prisoners, because under Section 12114, Revised Statutes of Missouri, 1929, it is provided:

> " *it shall be the duty of the road overseers or road commissioners of each and every road district or township in this state to direct the work of such persons when so ordered by the county court; * "

If the county court deems it necessary and proper, it may employ such overseers to direct the work of such persons. - Section 12114.

III.

BOARD OF COUNTY PRISONERS.

It was the clear intention of the law makers to have the "board" of a prisoner in a county jail taxed as

costs in the case. This is apparent from the following statutes, quoted in part:

Section 11794:

"Hereafter sheriffs, marshals and other officers shall be allowed for furnishing each prisoner with board, for each day, such sum, not exceeding seventy-five cents, as may be fixed by the county court of each county * "

Section 11795:

"It shall be the duty of the county courts of each county * at the November term thereof in each year to make an order of record fixing the fee for furnishing each prisoner with board for each day for one year commencing on the first day of January next thereafter, * "

Section 3825:

"Whenever any person shall be convicted of any crime or misdemeanor he shall be adjudged to pay the costs, and no costs incurred on his part, except fees for board, shall be paid by the state or county."

Under Section 12115 it is made the duty of the jailer or sheriff to make out and present to the county court at its regular session a bill for board due him for such working prisoners, and it is the duty of the county court to order and pay such bill. If a prisoner is placed out on work under the conditions and rules heretofore pointed out, the employment is to be under,

> " *such rules and regulations and under such terms as they (county court) may prescribe, * "

The question of the board of the prisoners may or may not be a part of the terms under which the prisoners are compelled to work.

It is the opinion of this office that the county, in any event, is liable for the board of such prisoners, especially where no provision has otherwise been made in the working of a prisoner.

CONCLUSION.

The conclusion expressed in the above and foregoing divisions of this opinion, without reiteration, is the opinion of this office.

Respectfully submitted,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

FER:FE