

SHERIFF:

Where prisoner convicted of felony is unavoidably injured while Sheriff is taking him to State reformatory, the State should pay for the necessary medical care.

March 1, 1934.

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Mr. Merritt Miller,  
Sheriff of Gentry County,  
Albany, Missouri.

Dear Mr. Miller:-

We have your letter of January 29, 1934, in which is contained a request for an opinion as follows:

"I desire the opinion of your office as to whether or not the state of Missouri or Gentry County is liable and should pay the medical expenses and care of a juvenile boy who was injured in an automobile accident while I was conveying him to the state reformatory at Booneville, pursuant to an order of the Juvenile Court of Gentry County, Missouri, and a judgment of conviction.

"Delbert Armstrong and Clifford Redmond, two juveniles here, were complained against in the Juvenile Court of Gentry County, and found guilty of burglary and larceny, by D. D. Reeves, Circuit Judge and Juvenile Judge, and were sentenced to the Missouri State Reformatory for Boys for a term of four years. I was handed a commitment requesting me to convey these boys to Booneville, which I started out to do. But on the way, the morning being icy and slick, my car very unexpectedly skidded and struck a heavy post as we were going under an overhead railway crossing, at a sharp curve. This occurred at the edge of New Hampton, Missouri. In addition to damages to my car and personal injuries to myself, one of these boys, Delbert Armstrong, received a broken leg. I had him taken to the county physician immediately, and every precaution was taken in setting his leg, ex-raying it before and after setting. I have had a nurse with him ever since in my home at the jail house in Gentry County. This boy has gotten along famously and is now up and around.

"Query: On the theory that the accident was unavoidable, should the State of Missouri pay for the medical care and attendance of this boy while he is still in my custody and recuperating, until I may turn him over to the authorities at Booneville? Or if the state and county are both liable, which should pay?"

Section 8526, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 8526. Who shall be jailer.--The sheriff of each county in this state shall have the custody, rule, keeping and 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."

Section 8554, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 8554. Medicine and medical attendance to be procured -- physician may be hired by the year.-- In case any prisoner confined in the jail be sick, and, in the judgment of the jailer, needs a physician or medicine, said jailer shall procure the necessary medicine or medical attention, the costs of which shall be taxed and paid as other costs in criminal cases; or the county court may, in their discretion, employ a physician by the year, to attend said prisoners, and make such reasonable charge for his service and medicine, when required, to be taxed and collected as aforesaid."

Section 8357, Revised Statutes of Missouri, 1929, provides in part as follows:

"Sec. 8357. Costs, how paid.--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.  
\* \* \* \*."

Inasmuch as the accident and the resultant injuries were unavoidable, and therefore in the nature of an illness, so far as the legal rights and liabilities are concerned, we consider them to be within the purview of Section 8554 above cited. It is true that that section refers to prisoners confined in the jail, but we are of the opinion that a prisoner in custody of the Sheriff is within that status for the purposes above mentioned.

By Section 8526 above cited, the Sheriff is made the true jailer of the county and hence, under Section 8554 has the power in his discretion to procure medical attendance for any prisoner when he deems

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such necessary. The latter section further provides that the costs of such medical attention shall be paid as other costs in criminal cases.

Section 8357 above cited sets forth the manner in which the above mentioned costs shall be paid. Since the conviction in this case was of a felony, the state is by said Section made liable for the costs and hence for the cost of the medical attention, the same being construed by us to be not only a part of the costs of the general proceeding, but also a part of the costs of the delivery to the reformatory. Furthermore, this Section, read with Section 8554, clearly points out the legislative intention towards liability on the part of the state in such a situation as the one at hand.

Very truly yours,

CMHJr:LC

CHAS. M. HOWELL, Jr.  
Assistant Attorney General

Approved:

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Attorney General.