

COUNTY BUDGET: Classification of boarding prisoners.

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March 3, 1934.



Hon. M.E. Montgomery,
Prosecuting Attorney,
Scott County,
Benton, Missouri.

Dear Sir:

Your letter of January 19 addressed to Attorney General McKittrick has been handed to me for reply, same being as follows:

"I have just received a copy of an opinion from your office, holding that boarding of prisoners could not be classified under Class 1, 2, 3 or 4 under the County Budget Law, but would be classed as a 'contingent expense' under Class 5. In so holding, it appears to me that you have overlooked a number of statutory provisions.

Sec. 8526 provides that the sheriff shall be the county jailer, and shall have charge of the prisoners. Secs. 8527, 3426, 3440, 3443, 3476, 3487, 3716 and 3726 provide that the sheriff, as jailer, shall receive and safely keep all prisoners committed to jail by lawful authority. Secs. 8533 and 11794, mentioned in your opinion, provide that the sheriff shall feed and maintain these prisoners. Sec. 3827 and 3825 and a number of other sections provide that this expense shall be paid by the county where not recoverable against the defendant or chargeable to the State.

By these statutory enactments the Sheriff is specifically required to incur the expense of boarding these prisoners, and it appears to me that this unquestionably is an expense 'necessary for the conduct of the office' of sheriff, within the meaning of the provisions of the Budget Law, specifying items properly chargeable under Class 4. Consequently, it is

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my idea that boarding of prisoners, chargeable against the county, should be classified under Class 4 rather than under Class 5."

We assume that you refer to an opinion rendered by the writer to the Honorable Elbert L. Ford, Prosecuting Attorney, Kennett, Mo. wherein the expense of boarding prisoners was interpreted as being in Class 5 of the new County Budget Law. At the time the opinion was rendered the statutes mentioned in your letter were taken into consideration.

It seems that we are agreed that the only two classes of the County Budget Law in which the expense of boarding prisoners might be put are classes 4 or 5. We cannot, however, place the same construction on the phrase "necessary for the conduct of the office" as you do in so far as it relates to a sheriff. It is our opinion that the Budget Law refers to the items which are to be included in the phrase "necessary for the conduct of the office". We do not believe that it is comprehensive enough to include the expense of boarding prisoners.

Further, under our definition of "contingent expense" and "emergency expense", as contained in the opinion, which you seem to be familiar with, we are unable to classify the boarding of prisoners other than under these two terms. Neither can we comprehend how a county court could determine the amount to set aside for the boarding of prisoners. The amount would be variable; a sheriff may have two prisoners or he may have fifty during the course of the year, and he should have the right to look to the county for the cost of boarding them.

We appreciate your interest in the matter and want you to feel at liberty to write us any time when an opinion from this department does not meet with your approval, as we are always open to suggestions.

Respectfully submitted,

OLLIVER W. NOLEN,
Assistant Attorney General

APPROVED:

ROY McKITTRICK,
Attorney General

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