

BOARDING OF PRISONERS: County or state must pay cost of boarding prisoners to an adjoining county when there is no jail in the county where the crime was committed; county liable for cost in case of misdemeanor--state in case of felony under Sec. 8551, R.S. Mo. 1929.

5-21

May 8, 1934.



Hon. Owen C. Rawlings,  
Prosecuting Attorney,  
Marshall, Missouri.

Dear Sir:

This department acknowledges receipt of your request for an opinion of some time ago. The opinion was prepared but through inadvertence has been unduly delayed. However, we assume that it will still be beneficial to you. Your letter reads as follows:

"The County Court of Saline County, Missouri in October of this year, arranged for the confinement of Saline County prisoners in the county jail of Lafayette County, Missouri pending the time when a new Saline County jail could be constructed; the contract has already been let and the work is now started. The County Court in regular session had provided that 55¢ per day should be the cost to the jailor for the board of prisoners in confinement. The Saline County court, under above special agreement, is to pay 75¢ per day for the board of county prisoners, temporarily confined in the City Jail at Marshall, Missouri, and 58¢ per day for the board of Saline County prisoners confined in the Lafayette County jail.

"Is Saline County required to pay the cost of boarding its prisoners, in excess of the amount of 55¢ per day, or shall the entire cost be taxed as a part of the regular costs of the case, which costs will, in certain cases, be paid by the State.

"Should the cost of transporting prisoners from Saline County to the Lafayette County jail, after preliminary hearing, examination and commitment, be taxed as a part of the regular costs of each case, which in some cases will be paid by the State, or must such transportation cost be cared for by Saline County?"

## I.

County or state must pay cost to an adjoining county of boarding and confining prisoners when there is no jail in the county where the crime was committed.

The fact that Saline County has no jail at the present time due to a new one being constructed, said county would be entitled to place its prisoners in the county jail of Lafayette County under Sec. 8545, R.S. Mo. 1929, which is as follows:

"It shall be lawful for the sheriff of any county of this state, when there shall appear to be no jail, or where the jail of such county shall be insufficient, to commit any person or persons in his custody, either on civil or criminal process, to the nearest jail of some other county; and it is hereby made the duty of the sheriff or keeper of the jail of said county to receive such person or persons, so committed as aforesaid, and him, her or them safely keep, subject to the order or orders of the judge of the court for the county from whence said prisoner was brought."

As to the expenses of commitment, you are referred to Sec. 8551, R.S. Mo. 1929, which is as follows:

"In all cases where a person is committed from another county for a criminal offense under this article, such county, or the prisoner, or the state, shall pay the expenses, in the same manner as if the commitment had been in the county where the offense was committed; and in civil suits, the plaintiff, or defendant, or the prisoner shall pay the expenses, in the same manner as if the imprisonment had taken place in the county where the suit commenced."

Under this section your county is liable for the board and keep of the prisoners, if the prisoner is insolvent, or in the event the crime is a felony punishable solely by a sentence in the penitentiary, then the state would be liable for the costs instead of the county, granting, of course, that the prisoner is insolvent.

It is the duty of the county court to allow the sheriff not to exceed 75¢ per day. Sec. 11794, R.S. Mo. 1929 provides as follows:

"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 and by the municipal assembly of any city not in a county in this state: Provided, that no sheriff shall contract for the furnishing of such board for a price less than that fixed by the county court."

It is the duty of the county court to fix the allowance. Section 11795, R.S. Mo. 1929 provides:

"It shall be the duty of the county courts of each county in this state 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, and it shall be the duty of the clerk of the county court to certify to the clerk of the circuit court of such county a copy of such order, and the same shall be filed in the office of the clerk of the circuit court for the use of the said clerk and the judge and prosecuting attorney in making and certifying fee bills."

In the decision in the case of Mead v. Jasper County, 322 Mo., l.c. 1196-7, it is made the duty of the county court to make the order, but the time of making same is not mandatory as stated in the statute in the month of November, but may be made subsequently. The Court said:

"As stated above, the right and duty of fixing the sheriff's compensation for boarding prisoners has been by these statutes lodged in the county court, and appropriately so. The prices of provisions fluctuate and they may change materially from year to year. The sheriff's allowance for boarding prisoners is therefore required by statute to be fixed yearly and for periods of one year only. The county court has charge of the business and financial affairs of the county generally and the members of that body are familiar, or can readily familiarize themselves with local prices and conditions. The taxpayers, as well as the sheriff, are entitled to the benefit of the county court's judgment and official action in the matter. The duty imposed by the

statute concerns the public interest. It should be performed at the time designated in the statute, as should all duties imposed on officials, for the prompt and orderly administration of affairs. But for one reason or another it will sometimes happen that official duties are not performed in the precise manner, or within the precise time, prescribed by the law imposing them. The legislature must have understood that such failure might occur sometimes in the performance of the duty enjoined by the statute in question. Affirmative language only is used in the statutes, imposing the duty but making no provision for doing the thing required to be done in any other manner or by any other person or body in case the court could not act within the exact time designated. There is no language used in the statute that in terms limits the power or jurisdiction of the county court to the precise time therein specified. Taking into consideration the language and the purpose of the statute, the nature of the duty imposed, and the functions and duties of county courts in the management of the business and finances of the county, it seems to us clear that the county court's jurisdiction to make an order such as the one in question is not conditioned upon its being exercised within the precise time named in the statute and was not lost by the few days' delay shown in this case.

"If, after the time designated by statute and before the actual making of the order, rights had in some way become fixed which would be disturbed by enforcement of the order, we might have a different question with which to deal. But such question is not here. There is no showing that the sheriff was, or could have been, prejudiced because of the order not being made until January 5, 1924, instead of, for instance, on December 31, 1923, when he admits it could have been lawfully made. He knew that the last previous order, that on December 1, 1922, was for one year only and that by its terms, as well as by the law, it expired December 31, 1923. He knew that up to December 31, 1923, no order was yet made for 1924, though he testified that he expected one to be made. He could not then reasonably have contracted obligations for 1924, relying on an order of court or upon the few days' delay in the making of the order shown and he does not claim that he did so."

CONCLUSION

As to whether or not your county, or the state, would pay 55¢ or 75¢ in the event of an acquittal or the insolvency of the defendant, we are guided in our opinion by that portion of your letter which states that under special agreement your county pays to the City of Marshall 75¢ per day for prisoners confined in the city jail, and 58¢ per day for the board of county prisoners confined in the Lafayette County Jail. Since your county court has made that agreement, it becomes a contract which your county must abide by, and we are therefore of the opinion that the amounts paid to the City of Marshall and to the County of Lafayette are the actual costs in a criminal case and the County of Saline or the state would be compelled to pay them.

By Sec. 11794, supra, the maximum amount is 75¢ per day and as the costs are less than 75¢ per day, they are legal. When it is determined which is liable for such costs, it will be necessary to pay the sum of 75¢ per day for the time the prisoner is confined at Marshall and 58¢ per day for the time the prisoner is confined in the Lafayette County Jail.

## II.

The cost of transporting prisoners from Saline County to Lafayette County after preliminary hearing and commitment should be taxed as a part of the regular costs in each case and should only be paid by Saline County when under the statutes Saline County is deemed liable for the costs.

Section 8551 quoted supra, as applying to your first question, is also applicable and answers your second inquiry. We construe said section to mean and include that when a prisoner is committed to the jail of another county for any cause, the costs of transporting said prisoner and the costs of the prosecution should be paid by the county in which the crime was committed, if the county is liable, or by the state if under the statutes the state is liable for costs, and this to include the extra or additional costs occasioned by reason of the prisoner being transported to and from preliminary hearing and trial. This appears to be the law as applied to costs in changes of venue and we think the situation is the same.

The decision in the case of Ransom v. Gentry County, 48 Mo. 341, while not bearing directly on the question, has the same principle involved. We are herewith quoting a portion of this decision:

"It is not disputed that, for the taxable costs, the State and not the county is liable; but the county was held liable for those items because there was no jail where the cause was tried, and it became necessary

for the sheriff to guard the prisoner. It was the duty of the sheriff where the prisoner was confined to produce him before the Circuit Court of the county appointed for his trial. (Gen. Stat. 1865, ch. 223, Wagn. Stat. 787). And when so produced and delivered to the sheriff of such county, what is to be done with him? The sheriff must take charge of him; and if there is no jail, or if the jail be insufficient, the prisoner must be guarded, under the provisions of Section 19 of the chapter last referred to.

The statute makes no provision for taxing in the bill of costs the expenses of thus guarding the prisoner; hence the State cannot be required to pay them. But their payment is expressly charged upon the county by section 20 (Wagn. Stat. 787), which reads as follows: 'The expenses of said guard to be audited and paid as other county expenses.'

From this decision we can infer that all costs relating to transportation of prisoners when there is a statute covering the situation are to be considered legitimate costs. Likewise, the very early case of County of Perry v. John Logan, 4 Mo. 434, l.c. 436, wherein the Court said:

\*\*\*\*\*The fact then that the prisoner belonged to another county, is sufficient to discharge the county of Perry. The court in their answer, cite and rely on the 16th section of the revised code of 1825, respecting jails and jailors, p. 415, which says that in all cases where a person is committed from another county, for a criminal offence under this act, such county, or the prisoner or the State shall pay the expenses in the same manner as if the commitment had been in the county where the offence was committed; and in civil suits, the plaintiff or defendant shall pay the costs, etc. It is not disputed that the commitment was under this act: It would be in our opinion, exceedingly unjust, to fix the costs of the guard on the county of Perry. Whether the State or some other county may be liable for these costs, it is not necessary to consider; as to who is liable, the law appears to be clear enough. \*\*\*\*\*

CONCLUSION

By statute it is mandatory on counties to build jails and provide for the safe-keeping of prisoners. However, the Legislature has evidently anticipated that counties are sometimes compelled to build new jails or that situations arise wherein counties cannot care for their own prisoners, and hence have provided that they can be placed in adjoining counties. By reason of such statutes and Saline County having complied with the same, we are of the opinion that the costs of transporting prisoners to and from preliminary hearings, trials, etc., constitute legitimate costs which in the case of a misdemeanor are to be paid by the county and in case of a felony by the state, or by the prisoner in both instances unless he be insolvent.

Respectfully submitted,

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APPROVED:

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Attorney General

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