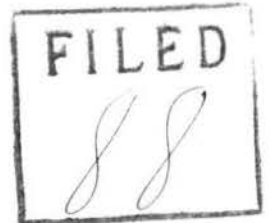


SHERIFF:

County is not liable for supplies purchased by sheriff to be used in courthouse unless the jail is in such courthouse and such supplies are for use in said jail and deemed necessary by said sheriff for the proper administration of said jail.

1-31
January 30, 1934.

Mr. Walter G. Stillwell,
Attorney-at-law,
Hannibal, Missouri.



Dear Mr. Stillwell:-

We have your letter of October 21, 1933, in which was contained a request for an opinion as follows:

"I have been requested by the County Court of Marion County, Missouri, to obtain an opinion of your office on the following question:

'Some time ago the Sheriff of Marion County purchased from the Germo Manufacturing Company of St. Louis, certain supplies which were and are being utilized and used in the courthouse in the Hannibal Court of Common Pleas at Hannibal. The Germo Manufacturing Company has presented their bill to the County Court and they desire your opinion as to whether or not the Sheriff can purchase supplies to be used in County Buildings and the liability of the County therefore'."

The sole question which presents itself here is whether or not the sheriff had the power in this instance to purchase at the county expense supplies to be used in the courthouse.

Section 2078, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 2078. SHALL CONTROL COUNTY PROPERTY.-
The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

January 30, 1934.

Section 1870, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 1870. DUTIES OF SHERIFFS.- The several sheriffs shall attend each court held in their counties, except where it shall otherwise be directed by law; and it shall be the duty of the officer attending any court to furnish stationery, fuel, and other things necessary for the use of the court whenever ordered by the court."

The former section places the control of the courthouse in the hands of the county court and the latter section gives the sheriff the power to purchase supplies only when ordered by the court to do so. Since the letter above quoted does not mention any such order, we must presume that there was none and therefore the sheriff was not properly authorized to purchase such supplies.

If the supplies in question were for use in the jail, which might well be in the courthouse, the law is to the effect that if the sheriff deemed the supplies necessary for the proper administration of the jail he had the power without authorization to purchase same at the county expense. (See *Kansas City Sanitary Co. vs. Laclede County*, 269 S. W. 395, l.c. 398; *Harkreader vs. Vernon County*, 216 Mo. 696). Since such facts do not, however, appear in the above quoted letter we need not pursue this angle.

The Supreme Court of Missouri in the case of *Kansas City Disinfecting and Mfg. Co. vs. Bates County*, 273 Mo. 300, passed squarely on our present question as it appears here. In that case Judge Faris who wrote the opinion stated at page 305-6 as follows:

"It is not doubted that the statutes (Secs. 1571 and 1573, R. S. 1909) and the construction thereof by this court in a case to an extent analogous (*Harkreader v. Vernon County*, 216 Mo. 696) furnish authority to a sheriff of a county to purchase such articles and supplies as are requisite and necessary to keep and maintain the county jail 'in good and sufficient condition and repair.' But such authority, absent an order of the county court, which might pro hac vice make him its agent, would not extend to purchases made for the poor house or the poor farm, the custody and control of which are vested by statute in the county court, and not in the sheriff. (Sec. 1343, R. S. 1909). Likewise, the county court is by statute vested with the control of the

Walter G. Stillwell--#3

January 30, 1934.

court house (Sec. 4081, R. S. 1909), and while it is made the duty of the sheriff 'to furnish fuel, stationery and other things more necessary for the use of the court' (Sec. 3887, R. S. 1909), this duty is delimited by the appended provision directing performance thereof 'whenever ordered by the court.' (Sec. 3887, supra.)

This latter conditional duty is disassociated from control of the premises and is a general one which the sheriff owes to the circuit court, to the probate court, and even to the county court itself, though the latter court is the general statutory contracting, auditing and fiscal agency of the county. Clearly, such an order should either be express, or plainly implied from the necessities of the situation."

Sections 4081 and 3887, Revised Statutes of Missouri, 1909, referred to in the above quotation are substantially sections 2078 and 1870, Revised Statutes of Missouri, 1929, respectively, which sections are quoted earlier in this opinion. This case has never been overruled and is the law in this state today.

In view of the above, therefore, we are of the opinion that the county is not liable for the purchase by the sheriff of the supplies in question.

Very truly yours,

CHARLES M. HOWELL, Jr.
Assistant Attorney-General.

CMH jr-MB

APPROVED:

Attorney-General