

SHERIFF: County Court can not change sheriff's fees for boarding prisoners after January 1, especially after the expiration of the November term.

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January 17, 1935



Honorable Oll Rogers
Sheriff of Jasper County
Carthage, Missouri

Dear Sir:

This will acknowledge receipt of your letter dated January 9, 1935, requesting an opinion, which reads as follows:

"When I was elected Sheriff of Jasper County for my second term in the November election, 1932, the County Court of our county consisted of Harve Dixon, presiding judge, and J. T. Burk and O.P.M. Wiley, Associate judges, and they were all three Republicans. Mr. Burk and Mr. Wiley both made the race the same time I did, in the November election, 1932, and I was elected and they were both defeated. These three Judges were all sore because I defeated their candidate for Sheriff and because they had been defeated, and at the same November term of Circuit Court these three judges set my board bill for boarding prisoners for the next year at 40¢ per day. They had been paying their Republican Sheriff various prices for each year from 55¢ to 75¢ per day. I tried to reason with them and they laughed at me and told me they had the power to make it 25¢ per day. I was afraid to say any more, afraid they might do just that.

The first of January, 1933, our new County Court took office, Harve Dixon, holdover presiding Judge, and Judge Geo. Daugherty and Judge Tom Phelps, Associate Judges.

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They saw the advantage the old court had taken of me through prejudice, and they rescinded the order on the 3rd day of February, 1933, and made the board bill at 50¢ per day. Judge Dixon signed the warrants for boarding prisoners for January, February and March, 1933. Then he refused to sign any more. Along in December, 1933, the County Court called me down, and they agreed to compromise by paying me the first six months at 50¢ and the last six months at 40¢, and they made an order to that effect. I am sending you a copy of the order.

Up to this time the State had just been paying me 40¢ per day for boarding state prisoners. So after the County Court made the new order I made out supplemental cost bills for 10¢ per day on all of the state prisoners on which I had 50¢ coming for the months of January, February, March, April, May and June, 1933, and had them signed up by our two Circuit Judges, Wilbur J. Owen and R. H. Davis, and by our prosecuting attorney, Ray E. Watson, and certified to by Geo. E. Masters, Circuit Clerk on October 13th, 1934, and sent them to the Auditor's office at Jefferson City.

Mr. Marion Spicer, Criminal Cost clerk in the state auditor's office has been holding up these bills. I had an interview with Mr. Spicer along the latter part of December, and he asked me if I wouldn't write to you in reference to these supplemental bills.

It doesn't amount to very much, the difference for the first six months of 1933, just \$208.40, but I told him I would write to you and explain the facts just as they are.

The County Court paid me just as the order will show, 50¢ for the first six

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months of 1933 and 40¢ for the last six months, and I think the State is entitled to pay the same.

Would like for you to write me and give me your opinion on this matter."

You state in your letter that the county court, at the November term, 1932, fixed your fee for boarding prisoners at forty cents a day for each prisoner for the next year. We assume for the purposes of this opinion that the county court made a valid order of record to that effect. You state further that the new county court on the 3rd day of February, 1933, rescinded the order made at the November term and fixed the fee at fifty cents per day for each prisoner. The certified copy of the order of the county court inclosed by you shows that on the 13th day of December, 1933, they attempted to make a further order allowing you fifty cents per day for furnishing board to each prisoner for the months of April, May and June, 1933, you having already received this amount for the months of January, February and March, and forty cents a day for boarding each prisoner for the months of July, August, September, October and November, 1933. Under the provisions of Section 12115 Revised Statutes Missouri 1929, the state is to pay the fees for boarding the prisoners, when, under the law, the costs of the case fall on the state. We understand your question to be, whether or not you are entitled to receive from the state fifty cents a day for boarding each prisoner, by virtue of either the order of the county court of February 3, 1933, or December 13, 1933 increasing, or attempting to increase, your fees for boarding prisoners from forty cents a day for boarding prisoners to fifty cents per day. We trust you appreciate the fact that in giving an opinion we must be guided strictly by the law and we can not be governed either by the justice or injustice of its application.

Section 11794 Revised Statutes Missouri 1929, reads 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."

Section 11795 Revised Statutes Missouri 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 case of Mead v. Jasper County 305 Mo. l. c. 476, the county court of Jasper County at the November term, 1922, on December 1, 1922, made an order allowing the sheriff seventy-five cents per day for boarding each prisoner for the term of one year, commencing on January 1, 1923 and ending December 31, 1923. During the same term of court, on January 16, 1923, the court made an order rescinding the order of December 1, 1922 and made a new order which allowed sixty-five cents a day per prisoner for board. In the above case, l. c. pages 482, 483, 484, 485, 486, and 488, the court said:

"The sole question for determination is whether respondent is entitled to be paid seventy-five cents a day for the board of each prisoner, as provided in the order of December 1, 1922, or is entitled to be paid only sixty-five cents a day on such account, as provided by the order of January 16, 1923.

It is agreed that the account has been paid in full, if the county court had the power to make and enforce the order of January 16, 1923. The solution therefore rests in the determination of the power of the county court on January 16, 1923, to set aside the order of December 1, 1922, and make a new order at the sixty-five-cent rate. If it had such power, the judgment of the circuit court should be reversed. If it did not have such power, the judgment should be affirmed."

"It is apparent that Section 11003 (now Sec. 11795 R.S. Mo. 1929) contemplates that the county court shall fix the compensation for the ensuing year during its November term and prior to January first. The use of the word 'thereafter' demonstrates that the order shall be made prior to January first. Therefore, the order of December 1, 1922, was timely and authoritatively made and the only question is whether the county court had the power to set that order aside and to make a new and different order after January first, but at the same term of court.

Appellant contends that the county court is a court of record and that its orders are in the breast of the court during the term at which such orders are made and that it may set aside such orders at any time during the term and make such orders in lieu thereof as it shall deem proper and necessary and that it had such power over the order of December 1, 1922."

"Assuming that the foregoing proposition is true generally, we are satisfied that such general rule has no application here. The power which the county court has to fix the fees of the sheriff for boarding prisoners is derived from the statute, which provides that such power shall be exercised

in a certain manner (by order of record, a copy of which shall be filed with the circuit clerk) and at a definite time (at the November term and prior to the first day of January). The power of the county court to set aside its order in the premises at a later day in the November term and prior to January first is not before us and we need not consider the case from that angle. The county court attempted to set aside the order of December 1, 1922, after January first. The precise question seems never to have been before the appellate courts of the State."

"The county court, having made a valid order which was within its power and duty to make at the November term and before January first, exhausted its power in respect thereto for that year and could not set same aside after January first, particularly if rights became fixed thereby by the ensuing year."

"The general rule is laid down in 15 Corpus Juris, page 470, where it is said:

'Where a county board or court exercises functions which are administrative or ministerial in their nature and which pertain to the ordinary county business, and the exercise of such functions is not restricted as to time and manner, it may modify or repeal its action; but in no event has such court or board the power to set aside or to modify a judicial decision or other made by it after rights have lawfully been acquired thereunder, unless authorized so to do

by express statutory provision. . . .
. . . . The same is the case after an appeal has been allowed, or where some special statutory power is exercised, the time and mode of the exercise thereof being prescribed by statute. Where the previous action of the board is in the nature of a contract which has been accepted by the other party, or on the faith of which the latter has acted, it cannot be rescinded by the board without the consent of the other party. Conversely, where the proposition has not been accepted or acted on by the other party, the board may restrict or rescind its action. In the absence of express statutory authority, a county board cannot review or reverse the act of a prior board performed within the scope of authority conferred by law. A county board or court may, however, at the term or session at which an order is made, revise or rescind it, provided this is done before any rights accrue thereunder, but ordinarily they have no power to do such act subsequent to such term or session!"

"The same rule of law which protects the sheriff from having his fees for boarding prisoners cut after January first protects the county from having such fees raised after January first by a new county court which might be inclined to favor the sheriff.

The cases cited by appellant go to the power of courts of record generally to set aside their orders made at the same term of court. None of them touch the question of the power of the county court, after the time fixed by statute has passed, to set aside an order, required by the statute to be made within dates explicitly fixed.

We have concluded that the judgment below was for the right party and it is accordingly affirmed."

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In your letter you state that the new court, on the 3rd day of February, made an order changing the fees allowed you for boarding prisoners from forty cents per prisoner per day to fifty cents. We assume therefore that this order was made at the regular February term. If a new court has no power at the same term of court, after January 1st, to rescind an order fixing the fees to be allowed a sheriff for boarding prisoners, as the case of Mead v. Jasper County, supra, seems to hold, certainly a new court would have no such power at a later date after the expiration of the November term.

We are not unmindful of the case of Mead v. Jasper County 18 S. W. (2nd) 464, which holds that an order of the county court made on the 16th day of January, 1924, fixing the fees to be allowed the sheriff for boarding prisoners, was valid. But in that case no order of the county court prior to January 1, fixing the fees of the sheriff for boarding prisoners had been made. The court, in the case last cited, at page 466, makes this distinction between the two cases.

"Plaintiff relies for reversal chiefly upon Mead v. Jasper County, 305 Mo. 476, 266 S. W. 467. That was an action by this plaintiff against the same defendant for balance due for boarding prisoners for the year 1923, in which plaintiff prevailed. But the facts were essentially different. Briefly, the county court had made the order of December 1, 1922, hereinabove referred to, fixing the sheriff's compensation for boarding prisoners for the year from January 1, 1923, to and including December 31, 1923, at 75 cents per day per prisoner. It was conceded that the order was timely made and valid. At the same term but on January 16, 1923, the newly elected county court, whose members had taken office on January 1, made and entered an order of record setting aside the order of December 1, 1922, and fixing the sheriff's compensation at 65 cents per day per prisoner. This court affirmed plaintiff's judgment for the balance due him according to the order made December 1, 1922, not on the theory that the county court had lost jurisdiction by failure to act prior to January 1, which was not in the case and was not considered, but on the theory that that body had acted and had made a valid order and had thereby exhausted its jurisdiction for

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that year and could not thereafter set aside the order, particularly if rights had become fixed thereby for the ensuing year.

We are therefore of the opinion that the orders of the county court under date of February 3, 1933 and December 13, 1933, attempting to change the fees of the sheriff for boarding prisoners, were invalid, and it is our further opinion that you are only entitled to collect from the state for boarding prisoners forty cents a day for each prisoner, as fixed by the order of the county court at the November term, 1932.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

JET:LC