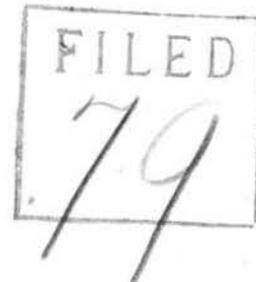


SHERIFFS: Sheriff must feed prisoners and County must reimburse him for ~~feed~~ <sup>feed up to 75¢</sup> per day per prisoner in Putnam County.

October 10, 1935.

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Honorable V. C. Rose, Jr.  
Prosecuting Attorney  
Putnam County  
Unionville, Missouri



Dear Sir:

We acknowledge your request for an opinion dated September 11, 1935, which reads as follows:

"Until last fall a deputy sheriff of this county had been feeding and seeing after prisoners confined in the county jail. At or about that time the county court reduced the compensation for food from a higher figure to sixty cents per day. As I understand the facts the deputy Sheriff and Sheriff of the county refused to perform such service further, but irrespective of that feature, it seems the county court made a verbal agreement with a restuarant keeper here to furnish the board and he and his wife have been in the habit of so doing.

"I have no personal interest in the matter one way or the other, but last night the restuarant keeper and "jailer" lost his keys in the jail which were discovered by an inmate and two of the prisoners let themselves out.

"It seems to me that the foregoing business is being conducted too loosely. I wish to do something to tighten it up.

"My opinion is that it is the duty of the Sheriff of a county of this size, (11,502 population), to either person-

ally keep charge of the jail or in a legal manner appoint a suitable jailer to do so. That he cannot relinquish this duty even though he may feel that the compensation awarded for board of prisoners is inadequate. I base my conclusion on sections 8526 and 8527, R. S. Mo. 1929 and on the case of State ex rel Price 246 S. W. 572, as well as on a reading of sections 11794 and 11795 R. S. Mo. 1929.

"I have in mind requesting the Sheriff to personally look after the jail and feeding of prisoners or to appoint some suitable person to do so who is responsible to him. Do you agree with me on the law of the matter?"

Section 11794 R. S. Mo. 1929, provides:

"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 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."

Section 12115 R. S. Mo. 1929 provides:

"Hereafter when any person or persons shall be confined in the common jail for any criminal offense, the sheriff or jailer may make out and present to the county court at its regular session, a bill for all board due him for the board of such prisoners; such bill shall specify the offense with which each prisoner is charged, and shall be audited and allowed by such county court, and the clerk thereof directed to draw a warrant for the aggregate amount thereof. When the final determination of any criminal prosecution shall be such as to render the state liable for costs under existing laws, it shall be the duty of such county clerk to certify to the clerk of the circuit or criminal court in which the case was determined, the amount due the county for boarding such prisoners; it shall then be the duty of the clerk of the circuit or criminal court in which the case was determined, to include in the bill of costs against the state, all fees for board of prisoners theretofore paid by the county, setting forth the fact that such fees are due the county, and the fees for board which have accrued since the last payment by the county, shall be stated separately as being due the sheriff or jailer. Such fees due the county when collected by the clerk of the circuit or criminal court shall be immediately paid into the county treasury."

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It will be presumed that Putnam County maintains a jail as provided in Section 8524 R. S. Mo. 1929 which reads as follows:

"There shall be kept and maintained, in good and sufficient condition and repair, a common jail in each county within this state, to be located at the permanent seat of justice for such county."

Section 8526 R. S. Mo. 1929 reads as follows:

"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 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 8527 R.S. Mo. 1929 reads as follows:

"It shall be the duty of the sheriff and jailer to receive, from constables and other officers, all persons who shall be apprehended by such constables or other officers, for offenses against this state, or who shall be committed to such jail by any competent authority; and if any sheriff or jailer shall refuse to receive any such person or persons, he shall be adjudged guilty of a misdemeanor, and on conviction shall be fined in the discretion of the court."

Section 8533 R. S. Mo. 1929 reads as follows:

"Whenever any person, committed to jail upon any criminal process, under any law of this state, shall declare, on oath, that he is unable to buy or procure necessary food, the sheriff

or jailer shall provide such prisoner with food for which he shall be allowed a reasonable compensation, to be fixed by law; and if, from the inclemency of the season, the sickness of the prisoner or other cause, the sheriff shall be of the opinion that fuel, additional clothes or bedding, medicine and medical attention are necessary for such prisoner, he shall furnish the same, for which he shall be allowed a reasonable compensation."

Section 8535 R.S. Mo. 1929, reads as follows:

"Every sheriff and jailer, and other person or persons whatsoever, to whose custody or keeping any person or persons shall be committed by virtue of any writ or process, or for any criminal offense, except on conviction for felony, shall permit and suffer him, her or them, so committed, at his, her or their will and pleasure, to send for and have any necessary drink or food, from what place and whom they please, and, also, to have and use such bedding, linen and other things as he, she or they shall think fit, without detaining the same, or any part thereof, or enforcing or requiring him, her or them to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him, her or them in using thereof or relating thereto."

In the case of State ex rel. v. Price 296 Mo. 130; 246 S.W. 572, l. c. 574, the Court had under consideration the above Statutes and said:

"In this capacity it became his duty to see that the prisoners confined there were provided with food, bedding, and medical attention.

Section 11003 makes it the duty of the county court at the November term of each year to fix the fee for furnishing each prisoner with board for each day during the following calendar year. During the entire term of the defendant Price, the amount of this daily charge was limited to 50 cents, and the sheriff or jailer was forbidden to make any contract for the boarding of prisoners for a less sum."

The above case proceeded further and held that money received by a sheriff for the expense of boarding prisoners is not strictly a sheriff's fee, and is intended only to indemnify the sheriff for money spent in feeding prisoners, in spite of the fact that Section 11795, supra, terms this allowance of board money as a fee.

In the case of Lefman v. Schuler 317 Mo. 671; 296 S. W. 808, 1. c. 814, the Supreme Court held that in Missouri the Sheriff is ex officio keeper of the jail except in St. Louis where the Legislature has ordained otherwise, and in that case the Court said:

"In this state and city all process and commitments affecting the custody of state prisoners, both before and after conviction, are directed to the sheriff, and he in the first instance takes charge of all such prisoners and thereafter places them in the said city jail. He is likewise required to have such prisoners before the court at the time of arraignment, trial, and sentence. It would therefore appear that he would be the logical person to have charge of the city jail, but be this as it may, it is quite evident that the lawmaking power (namely, General Assembly of Missouri, the voters of the city and county of St. Louis in adopting the scheme of separation by virtue of

section 20, art. 9, Constitution of 1875, and the municipal assembly of the city of St. Louis) has ordained otherwise. \* \* \* \*.

"We agreed and still agree with Judge Roskopf that the sheriff is the logical person to have charge of the jail in the city of St. Louis, in which are confined prisoners confided to his custody by the circuit court. But the question of policy is one for legislative action and not for this court. That argument cannot be considered by us in determining the rights of the sheriff under existing expressions of the legislative will."

In the case of State ex rel. v. Trotter, 142 Tenn. 160; 218 S. W. 230, under statutes allowing the jailer to receive 50¢ per day for keeping and feeding prisoners in his jail, and providing: "That the sum of 50¢ shall only be allowed after the County Court Committee shall report that that sum shall be so paid, it being the discretion of the County Court as to whether the sum of 50¢ shall be allowed", where the County has changed the new elected sheriff's allowance after he was inducted into office, said Court said at l. c. 232 when they gave the sheriff the full statutory allowance over the protest of the County Judges:

"We are of the opinion that it is contemplated by the act that the prisoner must be fed three meals by the sheriff or jailer before he is entitled to receive the full sum of 50 cents. If he furnishes less than three meals, he is only entitled to receive pay for the meals actually furnished the prisoner on the basis of 50 cents for three meals.

Again at l. c. 233 the same Court said:

"\* \* \* \*in the cause under consideration, that this is the interpretation given these statutes by the officials

of every other county in the state, and was the construction placed upon said statutes by the officials of Knox county prior to the election and induction into office of the relator."

CONCLUSION.

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The Statutes say that the sheriff may appoint a jailer, but the word "may", as used in the Statutes places no mandatory duty on the Sheriff to appoint a jailer. Where the sheriff does not appoint a jailer in Putnam County, the Sheriff is ex officio jailer, and as jailer he is keeper of the jail in the light of Lefman v. Schuler, supra. No other construction can be placed on Sections 8524, 8526, 8527, 8533 and 8535, supra.

As keeper of the jail it is the duty of the Sheriff of Putnam County to supply the necessities of life to the prisoners, such as wholesome food and water, and his right to be reimbursed is wholly derived from and dependent on the Statutes.

A prisoner committed to the County jail for trial or for examination, or upon conviction for a public offense, must be actually confined in the jail until he is legally discharged. It follows that the Sheriff is compelled by law to physically supply such prisoners with the necessary food and board in the jail. This would be true if the Statutes were silent as to who is to pay the bill for their board, but the Missouri Statutes 11794 and 11795, supra, indicate that the County shall pay the bill, within limitations. These Statutes say that for furnishing each prisoner with board that the Sheriff or ex officio jailer be allowed not to exceed 75¢ for each day, and that the County Court make an annual order of record fixing the amount for furnishing each prisoner with board in an amount as circumstances might indicate as reasonable. If 60¢ is an amount in Putnam which the courts will say the circumstances indicate as reasonable, then 60¢ per day is legal and any more is illegal.

These Statutes above quoted construed together do not mean that a County Court can fix a sheriff's allowance for board at an arbitrarily small figure below 75¢ per day, thereby indirectly deterring and hampering the Sheriff in his official duty to keep the jail and give the prisoner proper board, including such food and water reasonably fit for human consumption, nor can the figure be reasonably fixed so low as to cause riot, mutiny or escape among prisoners in order to be on the outside where the pangs of hunger can be stilled. It is common knowledge that most prison riots are caused by poor feeding.

The 50¢ limit per day was increased by the Legislature of 1917 to the 75¢ limit per day because the Legislature recognized that the prisoner in many counties could not be fed on 50¢ per day. The County Treasury, under the law, stands to be reimbursed for money allowed to feed prisoners in State cases. In St. Louis where hundreds of prisoners are fed daily the statutory limit is 30¢ per day, but said prisoners are fed in mass and by reason of volume of meals the per diem cost is recognized to be less. The fewer the prisoners in any jail the cost per day for board is bound to be greater. That is what the Legislature had in mind when they changed the rate from 50¢ to 75¢ per day. The law was progressing with the times as Legislators wanted to offer no hindrance to sheriffs in performing their statutory duties in keeping jail, especially so when in the long run the State and not the County pays the bill. By these Statutes the County Courts are not charged with the duty of running the County jail or feeding the prisoners in jail. When they make their order of record, and the same is reasonable, they have exhausted their official prerogative. They may personally obligate themselves beyond the amount which they have allowed the Sheriff for furnishing each prisoner with board, but this personal liability is not a public State or County obligation, but is merely the price they should pay for trying to run the Sheriff's business. We cannot find any statutory authority for the County Courts' rights to contract with a restaurant keeper to attend to the feeding of prisoners incarcerated in the County jail. It is true, the sheriff does not have the right to pledge the credit of the County to feed prisoners.

In fixing the per diem allowed to the Sheriff for feeding prisoners, the Court should not establish an arbitrary figure within the 75¢ limit. As in the Tennessee case quoted, the County Court may get some indication of

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what a reasonable figure would be by determining the figure allowed to predecessors. The Court may get some idea of what figure is reasonable by considering the general price of food stuffs, as the Supreme Court of Missouri suggests in the Price case. The number of escapes and riots might indicate to the Court that they are not allowing enough for food.

Whether or not the 60¢ per diem allowed the Sheriff for feeding prisoners in Putnam County is so arbitrary and unreasonable as to be an abuse of power is a matter which calls for facts not at our disposal, which only a jury could pass upon in any event. We merely call your attention to the law of such cases.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney General.

APPROVED:

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JOHN W. HOFFMAN, Jr.  
(Acting) Attorney General.

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