

SHERIFFS: Contracting with sheriff's brother to feed prisoners at County Jail would not be a violation of the Nepotism Act.

1-18
January 13, 1937



Honorable Russell Wilkes
Sheriff of Monroe County
Paris, Missouri

Dear Mr. Wilkes:

This Department is in receipt of your letter of January 11, wherein you make the following request:

"At the last general election I was elected Sheriff of Monroe County, Missouri, and subsequently qualified and am now acting in that capacity.

"Among other duties connected with my office is the duty of feeding prisoners that are confined in the County Jail. The County Court allows me .75 cents a day for each prisoner I feed.

"I am about to enter into a verbal contract with my brother to furnish the food and prepare the meals for the above mentioned prisoners. In the event that I do this will it be in violation of the State Nepotism Laws?

"As I am very anxious to get this matter lined up I would appreciate having an opinion from your office concerning the above question at your very earliest convenience."

Section 11794, Revised Statutes Missouri, 1929, refers to the allowance to sheriffs and marshals for boarding prisoners, and is 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."

In making a contract with your brother it would be necessary to follow the terms of the proviso contained in the above section to the effect that you could not contract for a less price than fixed by the county court. You state the county court did allow you seventy-five cents a day for each prisoner. The nepotism section in the Missouri Constitution, Section 13 of Article XIV, is as follows:

"Any public officer or employe of this State or of any political subdivision thereof who shall, by virtue of said office or employment, have the right to name or appoint any person to render service to the State or to any political subdivision thereof, and who shall name or appoint to such service any relative within the fourth degree, either by consanguinity or affinity, shall thereby forfeit his or her office or employment."

It was ruled by the Supreme Court in the case of State ex rel Saline County v. Price 296 Mo., 121, l. c. 130, that the fees received by the sheriff for boarding prisoners are not of such nature as can be considered as a part of his compensation allowed by the statute. The court said:

"The trial court held that sums received by the sheriff from the county for the board of prisoners in his charge as jailer, were not fees for which the defendant can be held to account, as a part of his compensation allowed by the statute. (Sec.11036,R.S.1919.) Section 12551, Revised Statutes 1919 provides that 'the sheriff . . . shall have the custody, rule, keeping and charge of the jail within his county, and of all the prisoners in such jail, and may appoint a jailer under him, for whose conduct he shall be responsible.' 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 fifty cents, and the sheriff or mailer was forbidden to make any contract for the boarding of prisoners for a less sum."

And on page 132,

"While the statute making it the duty of the county court to fix the daily allowance for the feeding of prisoners terms it a 'fee' (Sec.11003,R.S.1919) the section creating that allowance (Sec.11002, R. S. 1919) seems carefully to avoid any such designation. This case turns upon the question whether or not this allowance is included in the word 'fees' as it is used in

Section 11036, Revised Statutes
1919."

CONCLUSION

The Statutes place the custody of the jail under the sheriff. The allowance made by the county court for feeding prisoners confined therein is in the nature of reimbursement for money which he must expend for food for the prisoners; and, as stated in the above decision, same is no part of his usual statutory compensation. Section 11794 prohibits the sheriff from contracting with any one for a sum less than the amount allowed by the county court. The nepotism section, Section 13 of Article XIV of the Constitution, quoted supra, states who shall, by virtue of said office or employment, have the right to name or appoint any person to render services to the State or to any political subdivision thereof.

We are of the opinion it is not applicable to the case of your contracting with your brother for feeding of the prisoners. He receives no money direct from the county but receives his compensation from you, nor is he rendering any service to any political subdivision thereof within the meaning of the Act.

We, therefore, hold that such contract would not be in violation of the nepotism act.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
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