

COUNTY TREASURER: Should refuse to pay criminal costs due Sheriff when sheriff is indebted to county for amount greater than such costs. May pay such costs when county court makes finding sheriff is not indebted to county

February 2, 1938

Honorable Forrest Smith
State Auditor
Jefferson City, Missouri



Dear Mr. Smith:

This will acknowledge receipt of your letter of January 22, 1938, in which you pass on to this Department the following inquiry:

"Your recent audit of this county showed the sheriff Mr. S. J. Harris kept returnable fees amounting to around three thousand dollars, I have on my Criminal Court Cost Record about eight hundred dollars due him. He claims them for the reason that judgment has not been taken against him, should I continue to hold fees due him?

"Should Mr. Harris bring to the County Court proof that his deputy hire was much more than his books showed at the time of the audit, and the County Court issued an order for the payment of his fees to him, would I be free to pay him?

"Please render me your opinion on the above.

"Thanking you in advance I am

"Yours Truly

"O.C. Ferguson, Treasurer of New Madrid County. "

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In your letter accompanying the above inquiry you state that the amount of \$3,293.34, found by your office to be due from the sheriff, was the excess in fees retained by the sheriff over the maximum amount of \$5,000.00 allowed by law.

Section 11828, Revised Statutes Missouri 1929, provides as follows:

"The fees of no executive or ministerial officer of any county, exclusive of the salaries actually paid to his necessary deputies, shall exceed the sum of five thousand dollars for any one year. * * * * *
* * * * * After the first day of January, 1891, every such officer shall make return quarterly to the county court of all fees by him received, and of the salaries by him actually paid to his deputies or assistants, stating the same in detail and verifying the same by his affidavit; and for any statement or omission in such return contrary to truth, such officer shall be liable to the penalties of willful and corrupt perjury."

Section 11829, Revised Statutes Missouri 1929, reads as follows:

"The county court shall at each regular session examine such statement, and may examine any person as to the truth of the same, and allow all necessary clerk or deputy hire, and deduct the same from the aggregate amount received by said executive or ministerial officer, and if there be an amount

still in the hands of said officer exceeding the sum specified in the preceding section, the court shall ascertain the amount of such excess over and above the amounts allowed to be retained by said officer and paid to deputies and assistants, and make an order directing such officer to pay the amount so ascertained into the county treasury."

Section 12153, Revised Statutes Missouri 1929, reads as follows:

"All collectors, sheriffs, marshals, clerks, constables and other persons chargeable with moneys belonging to any county shall render their accounts to and settle with the county court at each stated term thereof, pay into the county treasury any balance which may be due the county, take duplicate receipts therefor, and deposit one of the same with the clerk of the county court within five days thereafter."

Section 3854, Revised Statutes Missouri 1929, provides as follows:

"The county treasurers shall pay out all such fees to the proper owners as the same may be called for: Provided, that before any such fees shall be paid the party to whom the same is due shall furnish satisfactory evidence to the treasurer that he or she, as the case may be, is not at the time indebted to the state or county,

on account of delinquent back taxes, or is indebted to the state or county on account of any fine, penalty, forfeiture or forfeited recognizances, or costs for a violation of any criminal statute of this state, or for contempt of any court, no matter if the same shall have been paid by oath of insolvency as provided by law; or is indebted to the state or any county on account of any funds coming to his hands by reason of any public office; Provided further, that after deducting the amount of the indebtedness of the claimant, if any, on account of any or all of the various causes hereinbefore enumerated, the treasurer shall pay him the balance, giving duplicate receipts for the separate amounts paid, one of which shall be filed with the county clerk, who shall charge the treasurer with the same, but if the indebtedness of the claimant, equals or exceeds the amount of his fees, the treasurer shall give him credit for the amount of his fees, stating on what account, and shall make duplicate receipts for the same, one of which he shall deliver to the claimant and the other he shall file with the county clerk, who shall charge the treasurer with all such receipts, and in his regular settlements with the county court the treasurer shall make a full and complete exhibit of all his acts and doings under section 3853 to 3858, inclusive."

It is clear from Section 3854, supra, that before the treasurer can lawfully pay the sheriff the criminal costs due him, such sheriff must furnish the treasurer satisfactory evidence that he is not indebted to the county on account of any funds which came to him by reason of his office of sheriff. As the matter stands now there is

an audit on file showing the sheriff to be indebted to the county for funds unlawfully retained by him. In the face of this audit the treasurer could not legally pay the criminal costs due the sheriff.

Your second inquiry is as to what the position of the treasurer would be if the county court issued an order for him to pay the sheriff the said costs.

By the foregoing statutes quoted from it will be seen that it is the duty of the county court to audit the settlements of the sheriff as to his fees and to determine whether said officer has in his hands funds which he has not properly accounted for. If the county court does audit such accounts of the sheriff and makes a finding that said officer is not indebted to the county, then we think the treasurer would be obliged to pay the criminal costs due the sheriff, upon being furnished with a certified copy of the order of the county court making such finding. The courts of this state have uniformly held that the treasurer is a ministerial officer and is not required to investigate and determine for himself the legality and validity of warrants issued by the county court, and by similar reasoning we must conclude that where it is the duty of the county court to audit the accounts of the sheriff and in doing so said county court makes a finding that there is nothing due from that officer to the county, then the treasurer is not required to determine whether that finding is correct but he may accept the same as regular.

We do not mean to say that a finding by the county court upon an audit of an officer's account is res adjudicata or that such finding precludes the county from showing that there is actually an indebtedness due it from the officer. It is well settled that county courts do not act judicially in managing the financial affairs of the county. As was said in State ex rel. v. Diemer, 255 Mo. 1. c. 351:

"In the allowance of claims
against a county or in settling
with county officers, county

courts do not act so strictly as a court, or in the performance of a judicial function, that their allowance or disallowance of a claim is res adjudicata. Something of substance might be said in favor of the contrary theory, but at an early day this court considered our statutes and announced the doctrine, on the reason of the thing and because of a good public policy, that county courts in the allowance of claims, as in settling with officers, acted as a mere public board of audit, as ministerial, administrative or fiscal agents for the county and not strictly as a court, hence we have uniformly refused to apply the doctrine of res adjudicata to their orders allowing or disallowing claims against the county, or to their settlements with county officers. That doctrine has always been adhered to and must be accepted as settled."

We merely say that if a finding is made by the county court upon an audit of the sheriff's accounts that such officer is not indebted to the county, the treasurer would be justified in accepting such finding for the purpose of determining whether he should pay criminal costs due such official.

CONCLUSION

It is, therefore, the opinion of this office that the county treasurer should not pay criminal costs due the sheriff so long as the amount shown by

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the audit of the State Auditor to be due from the sheriff to the county has not been settled for and is greater than the amount of such costs due the sheriff.

It is our further opinion that if and when such sheriff produces to the treasurer a certified copy of a finding made by the county court, upon an audit of the sheriff's accounts, that such officer is not indebted to the county on account of any funds which came to his hands as sheriff, the treasurer would be free to pay the criminal costs due the sheriff.

Respectfully submitted

HARRY H. KAY
Assistant Attorney General

APPROVED

J. E. TAYLOR
(Acting) Attorney General

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