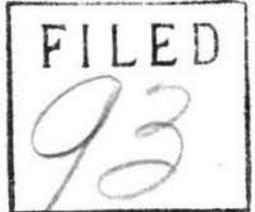


SHERIFFS:

Assistant taking patient to State Hospital allowed \$4.00 per day. County court may furnish siren and red light for sheriffs privately owned car. May appoint deputies with approval of circuit judge.

February 8, 1938

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Mr. Rudy J. Walter,
Sheriff of Moniteau County,
California, Missouri.



Dear Sir:

This will acknowledge receipt of your letter of January 27, 1938, requesting three official opinions from this office which request reads as follows:

"As sheriff and officer of the State of Missouri, I would like to have a written opinion from your office on the following legal questions.

1. Under Section 11791, R.S. 1929, entitled, Fees of Sheriffs, Marshalls and other officers, there is provided that in cities and counties having a population of three hundred thousand inhabitants and over, each deputy sheriff, not more than two, shall be allowed for each day during the term of court three dollars.

How many deputy sheriffs are allowed under the law in a county of 12,173 population for each day during the circuit court? (court being actually in session) And what fee are they to be paid?

2. It has been ruled by the prosecuting attorney of this county that the county is without power to furnish or purchase for the use of the sheriff a siren and red light, said equipment to belong to the county and be passed on to the succeeding sheriff in office. The basis for this opinion was rendered on the fact that equipment belonging to the county could not be attached to the sheriff's car when privately owned.

I would like to know if the county can legally furnish this equipment such as red light, siren, handcuffs, guns, and other equipment which is necessary for the sheriff to properly cope with crime. Said equipment to be passed on to the succeeding sheriff in office. In what class should this equipment be budgeted?

3. At page 408 Laws of Missouri 1933 under Section 8662, entitled, Compensation of Sheriffs. 'The sheriff or other person, for taking a patient to a state hospital or removing one therefrom, upon the warrant of the clerk, milage going and returning, at the rate of ten cents per mile and one dollar per day for the support of each patient on his way to or from the hospital shall be allowed, to each assistant allowed by the clerk and accompanying the sheriff, or other person acting under the warrant of the clerk, four dollars per day for the time actually consumed in making said trip said sum, to include all expenses of such assistant, -----.'

In regard to the pay of each assistant, does this section mean \$4.00 to be paid them regardless of the fact that it takes only three hours for the trip to the hospital, or should this \$4.00 be pro-rated.

It is also provided that \$1.00 be paid the sheriff for maintenance of the patient, does this mean that he is to receive the \$1.00 regardless of the fact that he is not put to any expense for support?

As Sheriff of Moniteau County I would appreciate a written opinion on these three legal questions which are above stated."

I

Section 11513 R.S. Mo. 1929 reads as follows:

"Any sheriff may appoint one or more deputies, with the approbation

of the judge of the circuit court; and every such appointment, with the oath of office indorsed thereon, shall be filed in the office of the clerk of the circuit court of the county."

Section 11514 R.S. Mo. 1929 reads as follows:

"Every deputy sheriff shall possess all the powers and may perform any of the duties prescribed by law to be performed by the sheriff."

Under Section 11513 R.S. Mo. 1929 which is the general law in regard to the appointment of deputies, the appointment of deputies must be approved by the judge of the circuit court.

Under Section 11516 R.S. Mo. 1929, in case of an emergency, the sheriff may appoint deputy sheriffs without permission from the judge of the circuit court and their salary shall be two dollars (\$2.00) per day. This section reads as follows:

"Every sheriff shall be a conservator of the peace within his county, and shall cause all offenders against law, in his view, to enter into recognizance, with security, to keep the peace and to appear at the next term of the circuit court of the county, and to commit to jail in case of failure to give such recognizance. In any emergency the sheriff shall appoint sworn deputies, who shall be residents of the county, possessing all the qualifications of sheriff. Such deputies shall serve not exceeding thirty days, and shall possess all the powers and perform all the duties of deputy sheriffs, with like responsibilities, and for their services shall receive two dollars per day, to be paid out of the county treasury."

In the case of Scott v. Endicott, 38 S.W. (2d) 67, the court held:

"There can be no doubt that a deputy sheriff appointed by the sheriff, as provided by section 11513, R.S. Mo. 1929, is a public officer. State ex rel. Walker v. Bus, 135 Mo. 325, 36 S.W. 636, 33 L.R. A. 616. That being true, he is subject to the same general limitations as any other public officer in the matter of

salary and fees. There is no provision in the law providing a salary for deputy sheriffs in counties such as Ozark county. *****."

Under Section 11789 R.S. Mo. 1929, the fee of the deputy sheriff for attending each court of record or criminal court and for each deputy actually employed in attendance upon such court, the number of such deputies not to exceed three per day, they shall be allowed three dollars (\$3.00) per day.

Bearing in mind Section 11513 as above set out, this deputy who attends court must be approved by the judge of the circuit court. The only other section pertaining to the fees of sheriffs is Section 11791 which applies only to criminal cases. Section 11790 applies to fees allowed sheriffs in cities having a population of six hundred thousand (600,000) or more and part of Section 11791 applies to only cities and counties having a population of three hundred thousand (300,000) inhabitants and over. In view of the fact that Moniteau County only has a population of twelve thousand, one hundred seventy three (12,173), the sheriff of this county is only allowed fees as set out in Section 11789 and Section 11791.

CONCLUSION

In conclusion, it is the opinion of this office that you are limited to the appointment of deputy sheriffs in that any appointment you should make must be approved by the judge of the circuit court of that county. When the deputy or deputies is appointed and approved by the judge of the circuit court, they shall be allowed as salary or fee for attending court three dollars (\$3.00) per day while actually employed.

II

Section 2078 R.S. Mo. 1929 reads as follows:

"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."

Under this section the county court has the power to purchase either real or personal property for the use or benefit of the county.

Section 3, article X of the Constitution of the State of Missouri reads as follows:

"Taxes may be levied and collected for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax and all taxes shall be levied and collected by general laws."

This section of the constitution prohibits in a way the collecting of taxes and using the same for any purpose other than public purposes.

In your letter you state that the county court was informed that they could not furnish a siren and red light on your car for the reason that the car was privately owned. In the case of State v. Hackmann, 218 S.W. 318, the court said:

"But neither of the opinions in that case rules that new debt may not be incurred for the valid public purpose (if such be a valid public purpose) of discharging a prior valid indebtedness. And this is the vital question here.

The first thing to be determined is whether or not the discharge of a valid existing indebtedness is a county public purpose. The second is whether there is (under the facts of this case) a new debt created for such public county purpose."

In your request the question is whether or not the furnishing of a siren and red light for your privately owned car is for a public service. The furnishing of this equipment is for the maintenance of the police car of the county and in no event would be of any use to you as a private individual.

In the case of State ex rel. Gilpin V. Smith, 96 S.W. (2d) page 40, the court also held that:

"Payment of valid existing debt by county is 'county public purpose' within constitutional requirement that taxes could be levied and collected for public purposes only (Const. art. 10, Section 3)."

"Words and Phrases" defines county purpose as follows:

"The Constitution does not attempt to give a definition of 'county purpose,' and, to obtain a correct interpretation of that phrase, we must look to the contemporaneous legislation upon that subject, and the uniform action of the county courts under the territorial government. By this reference it will be abundantly demonstrated that, at the time the Constitution was adopted, 'county purposes' were taken to embrace principally the erection and repair of courthouses and jails; the opening and maintaining of public thoroughfares within the limits of their respective counties, by opening roads, building bridges, and causeways, and keeping the same in repair; licensing and regulating ferries and tollbridges, etc. It is thus seen that the entire subject of highways was at that time an object peculiarly within the jurisdiction of the county authorities, and we are hence warranted in the assumption that it was so understood by the convention when they used the phrase 'county purposes.' Duval County Com'rs. v. City of Jacksonville, 18 South. 339, 343, 36 Fla. 196 (quoting and approving Cotton v. Leon County Com'rs, 6 Fla. 610).

'County purposes,' as used in Const. art. 12, 6, providing that the Legislature shall authorize the several counties and incorporated towns to impose taxes for county and corporation purposes, include the support of their officers;

the building of courthouses and jails; the paying of the legitimate indebtedness of the counties; the construction of roads, bridges, and works of public necessity and convenience; and the expense of a county in the management of its affairs, the maintenance of internal police and good order, the public schools, 'and such other matters of public concern as may peculiarly affect the people of the county in their property and local interests.' Gadsden County v. Green, 22 Fla. 102, 110."

15 Corpus Juris, page 674, in describing county purpose holds as follows:

"The term is one which cannot be precisely defined, and to obtain a correct interpretation of the phrase recourse must be had to the contemporaneous legislation upon the subject and the uniform action of the county courts, and since the authorities have formulated no generally accepted definition of county purpose, it is necessary to leave each case involving the question to be decided as it may arise. It may be said, however, to be a purpose in accordance with the object of its organization, and will include such enterprises as would not advance the wants and demands of the community independently of public aid; such matters of public concern as may peculiarly affect the people of the county in their property and local interests. The term has been held to embrace the erection and repair of bridges; courthouses; roads; jails; poorhouses; public schools; public thoroughfares within the limits of their respective counties; and works of public necessity and convenience; also the licensing and regulating of ferries and toll bridges; the maintenance of internal police and good order; the support of county officers; the paying of the legitimate indebtedness of the counties; and the ordinary expenses of the county.*****."

CONCLUSION

In view of the above authorities, it is the opinion of this office that the county court may furnish a siren and red light for installation on the private car of the sheriff, providing the county court retains ownership of the siren and red light.

III

Section 8662 R.S. Mo. 1929 as amended and set out at page 408, Session Laws of 1933, reads as follows:

"To the Sheriff or other person, for taking a patient to a state hospital or removing one therefrom, upon the warrant of the Clerk, mileage going and returning, at the rate of ten cents per mile, and \$1.00 per day for the support of each patient on his way to or from the hospital shall be allowed: to each assistant allowed by the clerk and accompanying the Sheriff, or other person acting under the warrant of the clerk, \$4.00 per day for the time actually consumed in making said trip said sum, to include all expenses of such assistant. The computation of mileage in each case is to be made from the place of arrest to hospital by the nearest route usually traveled. Provided, that the said Sheriff shall furnish all necessary means of transportation without charge other than as above allowed. The cost specified in this Section shall be paid out of the County Treasury of the proper county."

This section is not ambiguous in any respect and provides for the payment of four dollars (\$4.00) per day for an assistant to accompany the sheriff. This payment is for the time actually consumed in making the trip and to include all expenses of such assistant. There is nothing in the section which provides for pro-rating the four dollar per day consumed in the trip by the assistant.

In the case of State ex rel. Cobb v. Thompson, (2d) 57, the court held:

"The rule is well stated, as follows:

'A statute is not to be read as if

open to construction as a matter of course. It is only in the case of ambiguous statutes of uncertain meaning that the rules of construction can have any application. Where the language of a statute is plain and unambiguous and its meaning clear and unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.'*****."

The court in the same case further held:

"***** In Lewis-Sutherland Stat. Const. vol. 2 (2d Ed.) p. 737, it is said:

'Where the omission is not plainly indicated and the statute as written is not incongruous or unintelligible and leads to no absurd results, the court is not justified in making an interpolation.'*****."

CONCLUSION

In view of the above authorities, it is the opinion of this office that the assistant shall receive four dollars (\$4.00) per day as set out in said section 8662 regardless of the fact that the actual time consumed going to the hospital would be only three hours.

It is also the opinion of this office that the sheriff is entitled to one dollar (\$1.00) as allowed by the statute as a fee for the maintenance of the patient, regardless of the fact that he is not put to any expense for support.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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