

COUNTY COURTS:  
DOGS:  
COLLECTION OF TAXES:

The county court is not authorized to appoint and pay a person to enforce the collection of dog taxes but may pay a person a reasonable sum to enforce its quarantine order on dogs for rabies.

February 24, 1939

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Mr. Edward V. Long  
Prosecuting Attorney  
Pike County  
Bowling Green, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you requested an official opinion from this department on the following question:

"Please give me an official ruling on the following situation.

"In Section 12877 Revised Statutes of Missouri, 1929, it requires the Marshals and Constables of the various cities and townships in this County to enforce the dog law. In this particular County the Constable's have resigned and refused to serve. Would this not be an emergency whereby a special Deputy Sheriff could be appointed under provisions of Section 11516, Revised Statutes of Missouri, and the County Court pay him a per diem for his services."

You supplemented the above request by the following letter dated February 22, 1939:

"This letter is written you in confirmation of our telephone conversation this morning and to supplement the information given in my letter under date of February 21st wherein I ask for an opinion as to whether or not the County Court could

pay a Special Deputy Sheriff \$2.00 per diem under Section 11516, Revised Statutes of Missouri, 1929, when such Deputy Sheriff is to impound certain dogs here in this County.

"As you know this County passed the County Dog Law at the last election and since this law is being enforced there have been numerous dogs abandoned in the County. We are informed that there are at least two or three hundred stray dogs in Louisiana and I know that there is a large number in this City. The Veterinarians in the County advise me that rabies is very prevalent and we have had considerable stock to be bitten by mad dogs. These dogs are not fed and are dangerous. The Constables in the various townships have resigned and refuse to act. Under such conditions it seems to me that an emergency would exist were the lives and property of citizens of this County would be endangered and that the County Court could pay such Deputy.

"This condition has been such that a Deputy Sheriff has already been appointed by the County Court and they have agreed to pay him \$2.00 per diem."

"P.S. Since dictating the above letter there has been a stray dog which went mad on the street here adjoining the Courthouse and had to be killed by the Deputy Sheriff."

In answer to the first question, from an examination of the statutes which apply to taxation of dogs, we find that the lawmakers made it the duty of the constables and town marshals to enforce the provisions of the law by Section 12877, R. S. Mo. 1929, which is as follows:

"Every city or town marshal of every incorporated city or town in the state,

constables of every township in every county of the state containing incorporated towns or cities which do not maintain the office of town or city marshal shall, within their jurisdiction, take up and impound in a suitable place (the location of which place shall be given by a notice posted in some conspicuous place in his office) all dogs found running at large in their respective cities, towns or townships without collars around their necks, marked as herein provided, and they shall keep such dogs for a period of one week, and at the expiration of said period shall put such dogs to death by humane methods; Provided, however, that the owner of any such impounded dog may upon the payment of the tax herein provided, and a redemption fee of five dollars (\$5.00) redeem such impounded dog and the city or town marshal or constable heretofore mentioned shall be permitted to retain the sum of two dollars (\$2.00) out of each redemption fee so paid, and shall pay over the balance of said fee on the first day of each month to the treasurer of the county in which said city or town marshal or constable, as the case may be, has jurisdiction, to be accounted for by said treasurers in the same manner as they are required by this article to account for licenses taxes; and any marshal or constable who shall fail or refuse to take up and impound any such dog shall be guilty of a misdemeanor and on conviction thereof fined not less than five dollars nor more than twenty-five dollars."

It will be noted that this section makes it the duty of such officials to take up and impound all dogs in their jurisdiction which are running at large without a collar

on them showing that the tax has been paid. This section provides for a fee of two dollars (\$2.00) for the officer performing this service which is to be paid by the owner of the dog if and when he redeems it. If the dog is not redeemed at the end of one week from the date of taking up, then the officer is to put it to death in some humane manner.

This section does not specifically provide pay for the officer for keeping the dog, but by the amount allowed such officer for his fee evidently the lawmakers have intended that the two dollar fee shall include the pay to him for impounding and keeping the dog until it is redeemed or put to death. We note that this section does not provide pay for the taking up and impounding of the dog which is not claimed or where the dog is unknown, but if the officers have any complaint about that omission in the law they would have to take that up with the lawmakers and have the act amended to cover pay for that service.

The rule for authority of county courts to pay out public funds to officers for salaries and fees is stated in *State ex rel. v. Brown*, 146 Mo. 401, 406, as follows:

"It is well settled that no officer is entitled to fees of any kind unless provided for by statute, and being solely of statutory right, statutes allowing the same must be strictly construed. *State ex rel. v. Wofford*, 116 Mo. 220; *Shed v. Railroad*, 67 Mo. 687; *Gammon v. Lafayette Co.*, 76 Mo. 675. In the case last cited it is said: 'The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform, as such officer, unless the statute gives it. When the statute fails to provide a fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services.'

Williams v. Chariton Co., 85 Mo. 645.

"The question then is by what statute is plaintiff entitled to the fees claimed?

"It is true that by section 3267, and section 4, article 20, page 2158, Revised Statutes 1889, the sheriff of the city of St. Louis is required to attend the criminal courts and court of criminal correction of said city, but no fee is allowed him by these statutes for such service, in the absence of which the presumption must be indulged that the service was gratuitous. \* \* \* \* \*"

And in King v. Riverland Levee District, 218 Mo. App. 490, 493, the rule is further stated:

"It is no longer open to question but that compensation to a public officer is a matter of statute and not of contract, and that compensation exists, if it exists at all, solely as the creation of the law and then is incidental to the office. (State ex rel. Evans v. Gordon, 245 Mo. 12, 1.c. 27, 149 S. W. 468; Sanderson v. Pike County, 195 Mo. 598, 93 S. W. 942; State ex rel. Troll v. Brown, 146 Mo. 401, 47 S. W. 504.) Furthermore our Supreme Court has cited with approval the statement of the general rule to be found in State ex rel. Wedeking v. McCracken, 60 Mo. App. 1.c. 565, to the effect that the rendition of services by a public officer is to be deemed gratuitous, unless a compensation therefor is provided by statute and that if by statute compensation is provided for in a particular mode or manner, then the officer is confined to that manner

and is entitled to no other or further compensation, or to any different mode of securing the same."

From the foregoing it will be seen that the constables or marshals are only entitled to two dollars (\$2.00) for impounding a dog the pay of which depending upon the owner redeeming the dog.

You state in your letter that the constables have resigned and refuse to enforce this law. As a result thereof the county court has appointed a deputy sheriff to perform these duties, and you ask whether or not the court is authorized to do this by virtue of the provisions of Section 11516, R. S. Mo. 1929, which is 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."

We construe this section to be applicable only when there is a general disturbance of the peace in the county and the sheriff being unable to quell it may appoint deputy sheriffs for a period of not exceeding thirty days who shall receive two dollars (\$2.00) per day for their services. We do not think that the failure to enforce the dog tax law is such an emergency as is contemplated by the lawmakers by said Section 11516, and, therefore, the county court would be unauthor-

ized to pay a deputy sheriff two dollars (\$2.00) per day for thirty days to perform the duties of enforcing the dog tax law.

Your letter of February 22nd puts another issue into the request, that is, would the county court be authorized to employ and pay a person to enforce its orders made for the purpose of checking rabies, which you state is prevalent in that county. The sections of the statutes which apply to the duties of the county court in such cases are as follows: 12867, 12868, 12869 and 12870.

Section 12867 R. S. Missouri, 1929, is as follows:

"Whenever rabies becomes prevalent in any city, town or village in this state, the mayor of such city, town or village shall, according to the necessity of the case, issue a quarantine order, requiring every owner or person in charge of any dog or dogs within the limits of such city, town or village, to either kill or impound his dog or dogs, or to have such dog or dogs immunized. Said order shall be published once in the paper officially publishing the business of such city or town; and in the absence of such paper, shall be posted as in case of sales of personal property. The mayor of such city, town or village is authorized by proclamation, to terminate any such quarantine whenever, in his judgment, the necessity for it no longer exists."

Section 12868, R. S. Missouri, 1929, is as follows:

"Whenever rabies become prevalent in any county, township, or school district in this state, outside of any city, town or village in such county, it shall be the duty of the county court or, when court is not in session, the presiding judge of the court, to take cognizance

thereof. The county court, or when court is not in session, the presiding judge thereof, is empowered and ordered to issue a quarantine order on any county, township, or school district, according to the necessity of the case, that each and every owner or person in charge of any dog or dogs, in the territory affected, shall either kill or impound every dog owned, or for the time possessed by him, or have such dog or dogs immunized. Said order shall be published as provided in section 12867 of this article. Such county court or presiding judge thereof is authorized by order to terminate any such quarantine whenever, in the judgment of the court or presiding judge, the necessity for it no longer exists."

Section 12869, R. S. Missouri, 1929, is as follows:

"Whenever any quarantine order is issued as provided in section 12867 or section 12868 of this article, it shall be the duty of all police officers, and town marshals and constables, in their respective jurisdictions, and within the jurisdiction of such quarantine, to kill all dogs found running at large, except those which have been immunized."

Section 12870, R. S. Missouri, 1929, is as follows:

"All expenses of such quarantine shall be paid out of the treasury of such city, town or village, or of the county, township or school district, as the case may be, and for the performance of their respective duties, the police officers, town marshals and constables, respectively, shall receive such fees and mileage as is provided by law for the performance of their other like duties."

From said Section 12867 it will be seen that the county court, when it deems it necessary, may make the quarantine order. After such order has been made, it is the duty of the police officers, town marshals and constables to enforce it. They are to be paid out of the treasury of the county, city, township, school district or village in which such quarantine order is made.

Section 12870, supra, provides that the officers enforcing the quarantine orders "shall receive such fees and mileage as is provided by law for the performance of their other like duties."

While this statute does not specifically state what the amount of the fee shall be, yet it clearly shows that the lawmakers intended that the officers shall be paid for that service. It is definite as to the pay for mileage, and since it provides that they shall receive pay for this service as they receive pay for other like duties, then it will be necessary to refer to the general statutes to find where such officers perform other duties like the ones imposed upon them by Section 12869, supra, and by the fee allowed for such service, fix the fee for the officer for performing the duties imposed upon him by said Section 12869.

Section 11777, R. S. Missouri, 1929, which refers to constables, provides that a constable shall receive ten cents per mile for serving process. If it is necessary for the constable to travel in executing the quarantine order of the county court, then this service would be like the service of the officer in serving a process, and we think he would be entitled to mileage at ten cents per mile. This section also provides that the constable shall receive such compensation as the justice of the peace may award for receiving and keeping property on execution or attachment.

The constable, in enforcing the quarantine order of the county court by taking up and keeping or impounding the dogs, would be performing a service like that of receiving and keeping property under execution or attachment, and we think that the lawmakers had this section in mind when they provided that the officer should receive pay the same as for other like service and that they intended that for

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the services of the constable in performing his duties under the quarantine order of the court he should be paid such amount as the county court which issued the quarantine order may deem proper.

CONCLUSION.

From the foregoing we are of the opinion that the county court is not authorized to employ and pay out of the county funds a person to enforce the provisions of the law relating to taxation of dogs. However, we are of the opinion that if there is an epidemic of rabies in the county, city, township or school district that the county court may make a quarantine order and pay the officers who enforce such order a reasonable amount of compensation for their services and for the mileage which such officer travelled in executing the order they shall be paid at the rate of ten cents per mile.

Respectfully submitted

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

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(Acting) Attorney General

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