

SHERIFF: The county court in the November Term must make an order allowing a definite amount for the board of each person for each day, notwithstanding the sheriff boards Federal prisoners.

February 21, 1939

Request #96

Hon. Conn Withers
Prosecuting Attorney
Clay County
Liberty, Missouri



Dear Sir:

We are in receipt of your request for an opinion under date of February 13, 1939, which reads as follows:

"The County Court of Clay County, Missouri, has asked for and I do hereby respectfully request the opinion of your Department upon the following matter:

A Grand Jury summoned for the June 1938 Term of the Circuit Court of Clay County, Missouri, in the course of its investigations placed an inquiry as to the expenditure of funds from the county revenue for the support and care of prisoners of the Federal Government who were confined in the Clay County, Missouri, jail.

As an investigation under this suggestion the Court employed an auditor to make a recapitulation of the funds expended by the County out of the Treasury thereof and through the disbursements by the Court for all supplies and expenses in maintaining the jail except the allowances to the sheriff for feeding prisoners, and, also, to give them the figures concerning the number of days during the test period calculated on the basis of one day per Federal prisoner, for the total of confinement of all Federal prisoners for the test period.

The Auditors reported that for the test period which began January 1, 1937, and continued to November 30, 1938, the general expenses paid through warrants by the County Court and not through the statutory allowance to the sheriff were as follows:

	Totals
Repairs	\$1,018.16
Laundry	283.07
Gas	162.95
Telephone	91.08
Water	202.43
Supplies.	443.36
Coal	446.08
Medical attention	138.89
Disinfecting.	795.14
Hauling	23.50
Lights	264.05
Insurance	82.58
	<u>\$3,951.29</u>

During the same period a total of state, county and Federal prisoners of 241 were confined for a total of 19,738 prisoner days. Of this total 52 Federal prisoners were confined for a total of 6941 prisoner days and 189 county and state prisoners for a total of 12,797 prisoner days.

Consultation was then had with the office of the United States Marshall through whom the Federal prisoners are received and we were advised that it was the practice of the Federal Government to pay a flat rate to the sheriff and that he was expected by the Federal Government to take care of the entire support of the Federal prisoners out of that rate which was, currently, 65¢ per day.

It was found that the sheriff receiving this rate of 65¢ per day did take care of the medical attention to Federal prisoners out of the same, but not any of the other costs which are paid in the

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course of maintaining the prisoners in the jail under the items above set out.

The County Court then considered that a sheriff in receiving the pay from the Federal Government for the total support of these prisoners should be liable to the County for the proportion of the general expenses paid by the County which could be allocated to the support of the Federal prisoners.

To that end, in order that the County might be reimbursed for the general expenses involved in maintaining the Federal prisoners, an order was entered by the County Court providing for the deduction of 20¢ per prisoner per day, (which was arrived at by dividing the total general expense for the test period by the total prisoner days for such period) from the allowances to the sheriff for the maintenance of county and state prisoners upon the theory that he was being reimbursed by the Federal Government for such general support and was therefore indebted to the county in the amount properly allocated to the Federal prisoners, which was calculated to be 20¢ per day.

The point has now been raised by Section 8540, R. S. Mo. 1929 that the limit the county can be reimbursed is the rate of \$1.00 per month and that the county cannot recover for any allocation of the general expenses of maintaining the jail apportioned to Federal prisoners.

We, therefore, desire the opinion of your Department with respect to the following questions under

the above facts:

1. May the County, under the above facts, make a deduction of 20¢ per day per prisoner for the maintenance of the Federal prisoners from the sum due the sheriff on other matters from the County?
2. If the foregoing question is answered in the negative does the County have any right to force re-payment to it of County funds expended in the keeping of Federal prisoners in the County Jail?
3. If so, by what means may this right of repayment be enforced and by what method should the amount thereof be determined?"

Section 11794 R. S. Missouri, 1929, reads 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."

It will be noticed in this section that the officer shall be allowed for furnishing the board for each prisoner for each day and not exceeding seventy-five cents per day. It will also be noticed that this certain amount for each prisoner for each day shall be fixed by the county court of each county.

Section 11,795 R. S. Missouri, 1929, reads as follows:

"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."

It will also be noticed in this section that it specifically says that it is the duty of the county court to make the allowance for each prisoner for each day, as for board, beginning on the first day of January. The section does not say that this allowance can be changed to a different amount during the ensuing year.

The word "board", according to 8 C. J., page 1130, is defined as:

"That which is served at the board or table; food, especially meals regularly furnished for pay, sometimes including lodging, but often, as in table board, day board, excluding lodging; * * * *"

This allowance made by the county court as prescribed under section 11795, supra, cannot be changed during the ensuing year and it was so held in the case of Mead v. Jasper County, 305 Missouri 476; 266 S. W. 467, 1. c. 469, where the court said:

"Section 11002 contemplates that the sheriff himself will furnish the board for the prisoners under his care in the county jail. But the proviso that he shall not contract for the furnishing of such board for a price less than that

fixed by the county court recognizes the fact that he may lawfully contract with others to furnish such board, the only limitation thereon being that he shall not be permitted to profit thereby. Sections 11002 and 11003 require provision to be made for the future, to wit, the ensuing year, and common fairness requires that the county court should not be permitted, through mere caprice or even while acting under entirely proper motives, to change its order to the detriment of the sheriff. Certainly, if respondent had elected to contract with a third person for the board of prisoners for the ensuing year on the price fixed in the order of December 1, 1922, it would constitute a grievous wrong to permit the county court to change its order.

"It is probable that, in the exercise of proper business foresight and sagacity, any sheriff boarding prisoners himself would make annual or other term contracts with butchers, grocers, and others for furnishing provisions etc., on the basis of the price fixed by the county court prior to January 1st. In any event, respondent clearly had the right so to contract. It was admitted that the aggregate board furnished to prisoners by the respondent during 1923 amounted to a total of 9,678 days. This equaled a daily average of over 26 prisoners. Substantial saving could undoubtedly be made in buying provisions for such a number by making contracts for definite periods, not longer than the year for which the price was fixed. The respondent therefore acquired a property right in the order of December 1, 1922, which the county court could not arbitrarily destroy. In fact, he acted under that order for 16 days and there was performance by him to that extent. By such order his rights became fixed.

"The same rule of law which protects the sheriff from having his fees for boarding prisoners cut after January 1st protects the county from having such fees raised after January 1st by a new county court which might be inclined to favor the sheriff."

Section 12115, R. S. Missouri, 1929, reads as follows:

"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 said 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."

Under this section the sheriff 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 under the allowance made by the county court in compliance with section 11795, supra.

Section 8526, R. S. Missouri, 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 the 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."

Under this section the jailer, or sheriff, of the county has the custody, rule, keeping and charge of the jail within his county.

Section 8527, R. S. Missouri, 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 constable 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."

It will be noticed under this section that it shall be the duty of the sheriff and jailer to receive prisoners and it is mandatory for the reason that it sets out that it shall be the duty, etc.

Section 8533, R. S. Missouri, 1929, reads as

"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."

Under this section the sheriff must furnish the prisoner with food where the prisoner is unable to pay for same.

In the case of State ex rel v. Price, 296 Mo., 130, 246 S. W. 572, l. c. 574, the court said:

"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" (section 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 R. S. 1919."

Under the holding in this case the court held that the board of the prisoner as allowed by the county court to the sheriff, or jailer, was not a part of the fee.

Section 8524 R. S. Missouri, 1929, 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."

Under this section it was the duty of the county to maintain a good and sufficient jail and it is not the duty of the sheriff or jailer to make repairs or furnish commodities so as to make the jail sufficient for the holding of prisoners, and following this section the court in holding that the county shall keep a sufficient jail it said in the case of Harkreader v. Vernon County, 216 Mo., 696, l. c. 700 and 708:

"This case is twin to Ewing v. Vernon County, this volume, page 681, and was argued and submitted with that case. Mr. Harkreader was sheriff of Vernon county. He sues in three counts--on the first, for his outlays (\$246.15) for gas and water service in the county jail; on the second, for outlay (\$18) for stamps used in his official business; and on the third, for outlay (\$72) for janitor service at his office at \$2 per month -- all which several sums he paid out because of the refusal of the county court to supply such water, gas, janitor service and stamps, and for which he demanded and was refused reimbursement.

"The case went on change of venue to Henry county and was there tried before a jury--Judge Graves presiding. From a judgment following a verdict on each count, Vernon county appeals."

"It is written in the statutes that jails should be 'kept and maintained in a good and sufficient condition,' etc. (R. S. 1899, sec. 8104), that is, 'good and sufficient' in a modern sanitary sense, having an eye to the sure results established by scientific investigation of the disease-breeding effects of filth and bad air. That statute is broad enough to cover the extraordinary condition disclosed by this record.

"We are driven to the conclusion there was more pique than principle at bottom in the action of the county court.

"Let the judgment be affirmed. It is so ordered. All concur, except Graves, J., who took no part."

According to the holding in this case where the county did not furnish a sufficient jail or quarters for the holding of prisoners, the sheriff could purchase such articles and make such repairs as to make it sufficient and could recover the amount expended by him from the county.

Section 8538 R. S. Missouri, 1929, reads as follows:

"It shall be the duty of the keeper of the jail in every county within this state to receive into his custody any prisoner or prisoners who may be from time to time committed to his charge, under authority of the United States, and to safely keep every such prisoner or prisoners, according to the warrant or receipt of such commitment, until he or they shall be discharged by due course of law of the United States."

It will be noticed under this section that it is the duty of the keeper or jailer in every county to receive United States prisoners. This section is mandatory and is further shown to be mandatory by section 8539 R. S. Missouri, 1929, which assesses a penalty for the failure to receive United States prisoners and which section reads as follows:

"The keeper of every jail aforesaid shall be subject to the same pains and penalties, for any neglect or failure of duty therein, as he would be subject to by the laws of this state for the like neglect or failure in the case of

a prisoner committed under the authority of the said laws."

Section 8540 R. S. Missouri, 1929, reads as follows:

"The United States shall pay for the use and keeping of such jails, at the rate of one dollar per month for each person that shall, under their authority, be committed thereto, and also to the jailer such fees as he would be entitled to for like services rendered in virtue of the existing laws of this state, during the time such prisoner shall be therein confined, and shall support such of said prisoners as shall be committed for offenses."

It will be noticed by this section that the county is reimbursed at the rate of one dollar per month for each person and the use of the jail and this section also provided that the jailer could receive such fees as he would be entitled to for like services rendered state prisoners. In other words the Legislature by enacting section 8540 provided that the sheriff should receive the same fees as allowed by the county court for the board of the prisoners. But in reading section 8540, it will be seen that the section does not relate to board but only for the support of said prisoners as shall be committed for offenses against the United States.

CONCLUSION.

In view of the above authorities it is the opinion of this department that if the county court made the order which was attached to your request and should deduct during the year of 1939 the amount of twenty cents per day per prisoner from the fees allowed the sheriff it would virtually amount to the changing of the order made of record in compliance with section 11795, supra, for the reason that when each government prisoner was entered in the jail and it being the duty of the sheriff to accept the govern-

ment prisoner it would change the order as made during the November Term by the county court for the fee for each prisoner for each day for the ensuing year of 1939. This conclusion is based upon the holding in Mead v. Jasper County, supra.

It is further the opinion of this department that the only order that the county court can make is 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, after the meeting of the county court. By the words for each prisoner for each day a definite amount must be set and not an indefinite amount as set out in the order of the county court reducing that allowance twenty cents for each government prisoner.

It is further the opinion of this department that the one dollar per month for each prisoner committed by the United States to the county jail, under section 8540, supra, is the only charge that the county can make for the use and keeping in such jail government prisoners. All fee statutes should be strictly construed and the sheriff of Clay County is entitled to an allowance of a definite amount for each prisoner for each day for the board of prisoners.

Of course the above opinion should not be considered as binding, but is only made for the purpose of the guidance of the Prosecuting Attorney and the county court. A very similar case is now pending in Jackson County, wherein Jackson County has commenced an action against Thomas R. Bash, Ex-Sheriff of Jackson County, in regard to the county receiving part of the board paid by the Government to the sheriff for the boarding and keeping of federal prisoners in the Jackson county jail and which amount had been collected in full by the sheriff from the United States Government.

APPROVED:

HARRY H. KAY
(Acting) Attorney General.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General