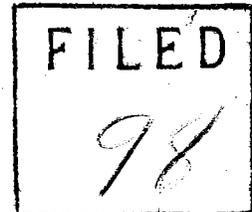


SHERIFF, JAILS AND JAILERS: County court cannot increase the allowance for feeding prisoners during the current year.

2-26-2
July 22, 1941

Hon. Conn Withers
Prosecuting Attorney
Clay County
Liberty, Missouri



Dear Mr. Withers:

This department is in receipt of your letter of July 16th, 1941, wherein you request an official opinion on the following question:

"In view of the increased costs of commodities and provisions, the County Court and the Sheriff of Clay County, Missouri have had under consideration the matter of the allowance to the Sheriff for the board of prisoners pursuant to Section 13417, R. S. Mo., 1939.

"On December 16, 1940 and at the November Term of that year, the Court made an order fixing the rate of allowance for each prisoner for each day at 65¢ per day.

"The Court would like to increase this allowance but is not able to satisfy itself that it has any authority to do so and, in view of the auditing of county offices under the interpretations of your office, has asked me to procure your opinion on that point, which is hereby requested."

Section 13416, R. S. Mo. 1939 fixes the maximum amount that sheriffs and marshals and jailers shall receive for furnishing board for each prisoner. The

amount being 75¢ per day.

Section 13417, R. S. Mo. 1939, refers to the duty of the county court and the time. That section being 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."

We think the question that you present is directly in the original case of Mead v. Jasper County, 305 Mo. 476, l. c. 484, 485 and 486. We quote l. c. 485:

"The county court, having made a valid order which was within its power and duty to make at the November term and before January first, exhausted its power in respect thereto for that year and could not set same aside after January first, particularly if rights became fixed thereby by the ensuing year. In Bayless v. Gibbs, 251 Mo. l. c. 506, it was said:

"This court, in numerous cases, has repeatedly held that the county courts of the respective counties of the

State are not the general agents of the counties of the State. They are courts of limited jurisdictions, with powers well defined and limited by the laws of the State; and as has been well said, the statutes of the State constitute their warrant of authority, and when they act outside of and beyond their statutory authority, their acts are null and void.'

"In Saline County v. Wilson, 61 Mo. l. c. 239, it was said:

"County courts are only agents of their respective counties in the manner and to the extent prescribed by law. So long as they continue to tread in the narrow pathway allotted to their feet by legal enactment, their acts are valid, but whenever they step beyond their acts are void.'

"The general rule is laid down in 15 Corpus Juris, page 470, where it is said:

"Where a county board or court exercises functions which are administrative or ministerial in their nature and which pertain to the ordinary county business, and the exercise of such functions is not restricted as to time and manner, it may modify or repeal its action; but in no event has such court or board the power to set aside or to modify a judicial decision or other made by it after rights have lawfully been acquired thereunder, unless authorized so to do by express statutory provision. . . . The same is the case after an appeal has been allowed, or where some special statutory power is exercised, the time and mode of the exercise thereof being

prescribed by statute. Where the previous action of the board is in the nature of a contract which has been accepted by the other party, or on the faith of which the latter has acted, it cannot be rescinded by the board without the consent of the other party. Conversely, where the proposition has not been accepted or acted on by the other party, the board may restrict or rescind its action. In the absence of express statutory authority, a county board cannot review or reverse the act of a prior board performed within the scope of authority conferred by law. A county board or court may, however, at the term or session at which an order is made, revise or rescind it, provided this is done before any rights accrue thereunder, but ordinarily they have no power to do such act subsequent to such term or session.'

"In State v. Morgan, 144 Mo. App. l. c. 40, it is said:

"The rule is well settled that a county court may revise or rescind an order at the term or session at which such order is made provided this be done before any rights have accrued under the order.' (Italics ours.)

"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.

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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 shall 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."

The same parties were involved in a kindred question in the decision of Mead v. Jasper County, 322 Mo. 1191. It appears in that decision that the principal question involved was the time within which the court should have made the order. The statute states that the contract should be made in November. There was a delay not due to any malice or caprice or any improper motive of either party. The court held that the statute was directory and the fact that the contract was entered at a later date did not invalidate the same. The decision discusses and differentiates between the original case and the later case and holds to the effect that the original case was not decisive of the point involved in the later case.

CONCLUSION.

We are of the opinion that the county court is not authorized at this time to increase the allowance of the sheriff of your county for the boarding of prisoners, in view of the terms of the statute and the original decision of Mead v. Jasper County.

Respectfully submitted,

APPROVED:

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