

SHERIFFS: Has authority to purchase supplies for county jail without County Court order, if budget is sufficient.
2) County Court cannot arbitrarily refuse account because price exceeds a prior contract price for other county buildings.

October 26, 1943

Mr. Loyd Bryan
County Clerk
Princeton, Missouri



Dear Sir:

We are in receipt of your letter of October 1, 1943, wherein you request an opinion from this department, which opinion request is as follows:

"The County Court of Mercer County, Missouri would like to have your opinion in regard to their power of auditing and adjusting accounts.

"This is in regard to a bill for fuel which was ordered by the Sheriff for use in the Jail. At the time said fuel was ordered, there were no inmates in the jail and the season was such that had there been, no fuel would have been necessary.

"Before the coal was purchased, the Court had informed the Sheriff that they had a contract price on coal and when he ordered to purchase at that price. However the Sheriff failed to do this and when the bill was presented to the Court they agreed to adjust the bill so that it would conform to their price.

"Has the County Court such authority to make an adjustment of this kind?"

It is further advised that our department wrote you on October 16, asking additional information and you replied:

"The County Court did not have an agreement as to price with the person who sold the coal to the Sheriff; The dealer does not

agree to accept the price per ton as set by the County Court."

We here quote the pertinent sections of the Revised Statutes of Missouri, 1939, which are as follows:

"Sec. 9193. 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."

"Sec. 9195. 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;
* * * *"

In the case of Missouri-Kansas Chemical Corp. v. New Madrid County, et al., 139 S. W. (2d) 457, the court, in interpreting the two sections, supra, had this to say:

"County jails are to be kept in good and sufficient condition, Sec. 8524, R. S. 1929, Mo. St. Ann. sec. 8524, p. 6243 (now Sec. 9193, R. S. 1939), and the sheriff of the county has the custody, rule, keeping and charge of the jail, Sec. 8526, Ibid (now Sec. 9195, R. S. 1939). * * *

"But, in 1933 the General Assembly enacted the 'county budget law,' Laws 1933, p. 340 et seq.; Mo. St. Ann. sec. 12126a et seq., p. 6434, which provides for an annual budget presenting a complete financial plan for the ensuing year. We refer to some, not necessarily all, of its provisions influencing our conclusions. Section 1 makes Secs. 1 to 8 inclusive, thereof applicable to counties having 50,000 inhabitants or less and requires the preparation of an annual budget of estimated receipts and expenditures by the respective county courts. * * * * * Section 8

(now Sec. 10917, R. S. 1939) requires the county court to go over, revise and amend the estimates to promote efficiency and economy, the public interest and to balance the budget; requires the recording and filing of certified copies of the revised estimate, and also provides; 'Any order of the county court of any county authorizing and/or directing the issuance of any warrant contrary to any provision of this act shall be void and of no binding force or effect;' and any county clerk, county treasurer, or other officer, participating in the issuance or payment of any such warrant shall be liable therefor upon his official bond.

"New Madrid county (and Mercer county) has less than 50,000 inhabitants. It is admitted of record that the budget of New Madrid county for 1934, 1935 and 1936 for the purchase of disinfectant, etc. for the county jail, with the exception of the \$200 paid on account, had been exhausted at the time the several respective purchases here involved were made * * * * *. Now, absent exceptional circumstances, a sheriff's authority to obligate his county is restricted to his budget allowances. The directed verdict for the county was proper. Consult Traub v. Buchanan County, 341 Mo. 727, 731 (3), 108 S. W. (2d) 340, 342 (3); Carter-Waters Corp. v. Buchanan County, Mo. Sup., 129 S. W. 2d 914 (2)."

From a reading of the aforesaid case together with citations therein, we must conclude that the sheriff of Mercer County had the authority to purchase the coal in question and in doing so he obligated Mercer County for the value thereof, subject, however, to the condition precedent that the budget for the purchase of such supply for the year in which it was purchased, and at the time it was purchased, had sufficient moneys to pay for the same, as it was pointed out in the above case, the county treasurer is not authorized to pay out a greater sum of money than would be on hand as shown by the budget, and if he did so he would be liable on his official bond. (See the portion of Section 10,972, Revised Statutes, 10, quoted in the Kansas Chemical Corporation Case, Supra.) Provided further, however, it is our view that if the price of the coal could be

said to be grossly excessive and a court refused to allow the bill then under a proper suit it would be a question for a jury to determine what price was reasonable.

Absent an expressed agreement on the part of the dealer who sold the coal to accept a sum less than the price agreed upon between such dealer and the sheriff, it is our view that under the authority in Missouri that the County Court cannot arbitrarily fix the price that a sheriff shall pay for his supplies.

CONCLUSION

- 1) It is the opinion of this department that a sheriff of a county of less than 50,000 inhabitants has authority to obligate his county for the purchase of supplies for the county jail, without an expressed order from the County Court so authorizing, providing he has sufficient funds in his budget for the year in which such supplies are bought.
- 2) A County Court has no authority to refuse accounts for supplies purchased by the sheriff for the county jail on the grounds that the County Court has a lower contract price for like supplies for other county buildings.

Respectfully submitted,

B. Richards Creech
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

BRC:ir