

CRIMINAL State cannot pay board bill in criminal
COSTS: cases until money has been advanced by
county and paid the sheriff.

February 4, 1943



Mr. W. A. Holloway
Chief Clerk
Office of State Auditor
Jefferson City, Missouri

Dear Mr. Holloway:

Under date of January 29, 1943, you wrote this office requesting an opinion as follows:

"St. Louis County has presented cost bills, in criminal cases, which are payable by the State, and in which is included board bills of prisoners confined in the St. Louis County jail.

"We have ascertained that on December 3, 1941, the St. Louis county court made the following order:

"It is ordered by the Court that the County of St. Louis, Missouri, shall furnish and provide board to prisoners in the St. Louis County jail and the Juvenile Detention Home during the year 1942 and shall receive therefor Seventy-five cents (\$0.75) per day for each such prisoner.

"And it is further ordered that the Purchasing Agent of St. Louis County shall purchase the food necessary to feed and board such prisoners and the Sheriff of St. Louis County is hereby relieved of said duty as is provided by law."

"And, that on the 11th day of January, 1943,

February 4, 1943.

the County Court of St. Louis County made the following order:

"It is ordered by the Court that the County of St. Louis, Missouri, shall furnish and provide board to prisoners in the St. Louis County Jail and the Juvenile Detention Home during the year 1943 and shall receive therefor Seventy-five cents (\$0.75) per day for each such prisoner. And it is further ordered that the Purchasing Agent of St. Louis County shall purchase the food necessary to feed and board such prisoners and the Sheriff of St. Louis County is hereby relieved of said duty as is provided by law.'

"I am requesting an official opinion as to whether the State is liable for the costs of the board of prisoners in cases where the State is liable for the costs in criminal cases under the orders of the County Court as set out above.

"We make this request by reason of the fact that under Section 13413, R. S. Missouri, 1939, the legislature allowed sheriffs, marshals and other officers a certain amount for the board of prisoners confined in the County jail."

By the provisions of Section 9195 R. S. Mo., 1939, the sheriff of each county is made the jailer:

"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.'

In addition to this section attention is also invited to Section 9202 R. S. Mo., 1939:

"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."

Section 13413, Article 2, Chapter 99, of R. S. Mo., 1939, mentioned in your letter, is 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."

Section 13417 of the same article and chapter makes the following provision for fixing the board allowance by the county court:

"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."

In connection with the foregoing section of the statutes it is desired to also call attention to Section 13774:

"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."

From the foregoing general statutes it is quite apparent that the sheriff or the jailer appointed by the sheriff is responsible for the boarding of prisoners. The county court's duties are to fix a limit to be paid for the board of prisoners, to audit the monthly accounts of the sheriff for the board of prisoners and to advance the payment of these accounts out of the county funds until final determination of the case. Upon final determination of a case the amount advanced for the board of a prisoner is certified by the county court to the circuit clerk and is repaid to the county.

The county courts are created by Section 36 of Article VI of the Constitution:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

These courts are courts of record of limited

jurisdiction and their principal function is to serve as the financial managers of the county. They are not general agents for the counties and have only such powers as are given to them by the statutes, and their actions outside the scope of the powers expressly conferred and those which are by implication necessary to carry out the implied powers are null and void. *Bayless v. Gibbs*, 251 Mo. 492; *State ex rel. Major v. Patterson*, 229 Mo. 373. Further, in this connection, attention is called to the following quotation from the case of *Morris v. Barr*, 342 Mo. 179, l.c. 183:

"In *Sturgeon v. Hampton*, 88 Mo. 203, at 213, the rule was early announced which has been generally recognized in this State as follows: 'The county courts are not the general agents of the counties or of the State. Their powers are limited and defined by law. These statutes constitute their warrant of authority. Whenever they step outside of and beyond their statutory authority their acts are void.' The court goes on to say that it should go far to uphold the acts of the county court when they are merely irregular, but such acts are not irregularities and are void when made without any warrant or authority in law."

A search of the statutes has been made for any law which would authorize the county court of St. Louis County to relieve the sheriff of his statutory duty of boarding the prisoners in the jail. No such authority has been found; therefore, the purported order relieving the sheriff of his statutory duty would be null and void.

The State is only authorized to repay to the county such amounts as have been properly advanced to the

Mr. W. A. Holloway

-7-

February 4, 1943

sheriff for the payment of the board. Under the purported orders which are null and void the county clerk could not honestly certify to the circuit clerk that any amount had been advanced by the county to the sheriff for the purpose of paying board bills of persons in jail. It is only when the amounts have been certified to the circuit clerk by the county clerk as having been advanced that the circuit clerk would have authority for including these amounts in fee bills. It follows that the State could not reimburse the county for board bills which it has not paid to the sheriff.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

WOJ:FS