

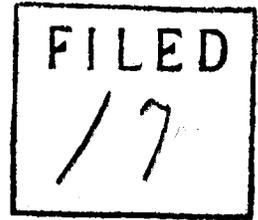
SHERIFF:

Sheriff cannot enter into agreement with county court whereby the sheriff's family would be furnished their groceries as reimbursement for feeding prisoners.

COUNTY COURT:

28  
D. Smith

July 30, 1946



8/2

Honorable Jonathan M. Clarke  
Prosecuting Attorney  
Lincoln County  
Troy, Missouri

Dear Mr. Clarke:

General Taylor wishes to acknowledge receipt of your recent letter requesting an opinion from this office, which request is as follows:

"Under the Old Constitution, the Sheriff's wife in a County of less than 30,000 population was paid for cooking and furnishing meals to prisoners.

"Under the New Constitution, the Lincoln County Court proposes to buy all groceries for prisoners and the Sheriff's immediate family and in return the Sheriff's wife will then cook for the prisoners on her own cooking equipment without charge.

"Will you please advise if the foregoing agreement would be legal?

"In view of the fact that we are now without any arrangement for providing meals for our prisoners, an early reply will be appreciated."

By reason of the adoption of the new Constitution, it has been necessary to amend many of the laws of the state; and, to properly answer your question, it will be necessary to cite certain sections of the Constitution and of the new laws.

Section 3, Article VI, of the Constitution, requires counties to be classified in four classes, and the Legislature, following this constitutional provision, has enacted Committee Substitute for House Bill No. 476, approved December 5, 1945. Referring to Section 1 of this bill, we find that all counties having an assessed valuation of \$10,000,000.00 and less than \$50,000,000.00 shall be in the third class. Section 2 of the bill provides that, for the purpose of determining the initial class in which a county belongs, the assessed valuation as set forth on pages 333 to 400 of the "Journal of the Board of Equalization of the State of Missouri for the year ending December 31, 1944," shall be used. This journal reveals Lincoln County, at that time, had an assessed valuation of \$16,611,338.00, and is therefore a county of the third class.

The Constitution of 1945, Section 13, Article VI, provides that all state and county officers, except constables and justices of the peace, charged with the investigation, arrest, transportation, custody, care, feeding and commitment of persons charged with or convicted of criminal offenses, shall be compensated for their services in connection with such persons only by salary.

Following this constitutional provision and the provision requiring classification of counties, the General Assembly has enacted a bill fixing the compensation of service in counties of the third class. This bill was passed with an emergency clause and approved April 19, 1946. It is House Bill No. 399. Section 1 of this bill is as follows:

"The sheriff in counties of the third class shall receive annually for his official services in connection with the investigation, arrest, prosecution, custody, care, feeding, commitment and transportation of persons accused of or convicted of a criminal offense, the following sums: In counties having a population of less than 7,500 the sum of \$1000; in counties having a population of 7,500 and less than 10,000 the sum of \$1200; in counties having a population of 10,000 and less than 11,500 the sum of \$1400; in counties having a population of 11,500 and less than 15,000 the sum of \$1600; in counties having a population of 15,000 and less than 24,000, the sum of

\$1900.00; in counties having a population of 24,000 and less than 30,000, the sum of \$2500.00; and in counties having a population of 30,000 and more, the sum of \$2800.00."

Census statistics for 1940 show the population of Lincoln County to be 14,395. From Section 1 of House Bill No. 899, supra, it is apparent the salary of the sheriff of Lincoln County is, therefore, \$1600.00 for his services in connection with the investigation, arrest, custody, feeding, transportation and commitment of persons charged with or convicted of crimes.

Section 4 of House Bill No. 899 has the following provision relating to the custody and feeding of persons in jail:

"The sheriff shall have the custody and care of persons lodged in the county jail and shall furnish them with clean quarters and wholesome food. At the end of each month the sheriff shall submit to the county court a statement supported by his oath or affirmation of the actual cost incurred by him in the feeding of persons under his custody together with the names of the persons, the number of days each spent in the jail, and whether or not the expenditure is properly chargeable to the county or to the state under the law. The county court shall audit said statement and draw a warrant on the county treasury for the amount of the actual cost payable to the sheriff. The county clerk shall submit quarterly to the State Director of Revenue a statement of the cost incurred by the county in the feeding of the prisoners properly chargeable to the state and the state shall forthwith pay the same to the county treasury."

This section is plain and unambiguous, and places the

duty of feeding the prisoners in jail squarely upon the sheriff, and not upon the county court. The duty of the court is to reimburse the sheriff for the actual expense incurred when the amount of the expense is properly certified by the sheriff to the county court.

For the performance of his duties, the sheriff, by Section 2 of this bill, House Bill No. 899, is allowed to appoint such deputies and assistants as are needed with the approval of the circuit judge. If, in feeding of prisoners, it should be necessary for the sheriff to employ an assistant to perform the service of cooking and serving the food, the sheriff would not be permitted to employ his wife. Section 6, Article VII, of the Constitution provides:

"Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment."

A wife is related within the prohibited degree of relationship. See State ex inf. Norman v. Ellis, 20 S.W. (2d) 363.

Your letter states the county court would buy the groceries for the feeding of prisoners and the sheriff's family, and the sheriff's wife would do the cooking without charge. The county court has no authority to buy the supplies. Under House Bill No. 899, the furnishing of food to prisoners in jail is the duty of the sheriff, and the law does not authorize the furnishing of food to the family of the sheriff. For the county court to undertake to do this would be an attempt to increase the compensation of the sheriff by subterfuge.

Hon. Jonathan E. Clarke

-5-

CONCLUSION

The proposed plan for feeding prisoners in jail in Lincoln County and the family of the sheriff is without authority of law, and should not be entered into.

Respectfully submitted,

W. O. JACKSON  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General

WOJ:LR