FEES: Board of prisoners in counties of the first class and the City of St. Louis.

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Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Attention: Mr. B. E. Nagland,
Chief Clerk

Dear Sir:

We have your letter of December 16, 1946, requesting an opinion from this department, which reads as follows:

> "This Department desires an Opinion from your Office with reference to the matter of Board of Prisoners in Counties of the 1st Class and the City of St. Louis.
>
> "There are two Counties in this Class, namely, Jackson and St. Louis. Section 13472 Article 4 R.S. Mo., 1939, which we believe covers Jackson County, fixes the amount for Board of Prisoners and such amount shall not exceed 30¢ per day for each prisoner. Has this Section of the Law been repealed? If so what is the maximum that can be charged against the State from this County for boarding prisoners where the costs are chargeable against the State? It is our understanding that another Section of the Statutes covers matter of board of prisoners in St. Louis County. Has such a Section of Statutes been repealed? If so, what is the legal amount chargeable against the State?
>
> "What is the maximum allowable cost of board of prisoners from the City of St. Louis which is chargeable against the State?
>
> "Have Sections 13416, 13417, and 13418 been repealed? If so, what new law or Sections have been enacted in lieu thereof."

Sections 13416, 13417 and 13418, R. S. Mo. 1939, have not been repealed. Section 13416 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."

This section is a general provision which authorizes a maximum cost of seventy-five cents per day for board of prisoners in each county and in the City of St. Louis.

Your attention is directed to House Bills 939, 899 and 872 of the 63rd General Assembly, which set up new provisions for board of prisoners in counties of the second, third and fourth classes respectively. Assuming the constitutionality of these statutes, they serve to modify Section 13416 under the principle that a later act will repeal a former act when the subject-matter of the two are the same. However, the former act is repealed only as to the repugnant part. The rule is set out in State v. Smith, 139 S. W. (2d) 929, at page 934:

> "* * * where there are two acts on one subject, the rule is to give effect to both if possible, but if the two are repugnant in any of their provisions, the later act, without any repealing clause, operates to the extent of the repugnancy as to repeal the first. Moriwether v. Love, 187 Mo. 514, 67 S. W. 250; * * * *"

Thus, Jackson County and St. Louis County, counties of the first class, and St. Louis City remain under Section 13416.

Now we must note Section 13472, R. S. Mo. 1939, which allows a maximum of thirty cents per day for board of each prisoner in counties having a population of 150,000 and not more than 500,000, and reads as follows:

"Immediately after the taking effect of this article, and at the end of each year thereafter, and oftener if thought proper, the county court shall fix the amount per day that may be expended by the marshal for furnishing board to the prisoners confined in the county jails, and the amount so fixed per day shall be the amount of costs taxed for that purpose against prisoners who shall be convicted, and be paid by the state for boarding those chargeable by law to the state: Provided, that such amount shall not exceed the sum of thirty cents per day. The food provided for prisoners shall be wholesome and properly prepared, and the marshal shall exercise business economy on behalf of the county, paying no more than the most reasonable rates for articles of food and the hire of employees, and he shall, in the exercise of his trust, be under the supprintending control of the count court at all times. It shall be the duty of the marshal at the end of each month to report in writing, duly verified by affidavit, to the county court, the names of all prisoners in the county jails of the county to whom he has furnished board, the number of days each has been so furnished by him, and all expenses incurred for that month in providing and causing to be furnished food to such prisoners, showing name, amount and exact cost of each article of food, voucher therefor, with the name of person from whom purchased, also the name of each employee, the purpose for which he was employed, and the exact amount to be paid him for his services, without any bonus or rebate or profit from either to the marshal or any intermediary whomsoever, instigated or created by the marshal; and any such marshal, deputy or employee of any such marshal who shall violate any provision of this section shall, upon conviction thereof, be punished by imprisonment in the penitentiary not exceeding three

> years, or by imprisonment in the county jail not less than six months or more than one year, or by fine not less than one hundred dollars nor exceeding one thousand dollars, or by both such fine and imprisonment. The county court shall allow and cause to be issued a warrant upon the county treasury, to the marshal, for the exact expense so incurred in boarding such prisoners, not exceeding in aggregate the amount aforesaid per day fixed by it."

And also Section 13529, R. S. Mo. 1939, which states that Section 13416 shall not apply to counties of a population of 200,000 and not more than 400,000, and reads as follows:

> "The provisions of Section 13416 Revised Statutes of Missouri 1939 shall not apply to said counties but the county courts of such counties shall make the order in the manner and form provided by Section 13417 Revised Statutes of Missouri, 1939, which said order shall also provide for furnishing each prisoner with board for each day at a sum not to exceed 75¢ per day, to be paid by the county or the county may designate any person or persons to supply said board: Provided, that no such person or persons shall contract for the furnishing of such board for a price less than that fixed by the county court."

Under the rule that a special statute will modify a general one on the same subject, it would seem at first glance that the above two later special statutes modify and repeal Section 13416, a general statute, to the extent that Jackson County, falling within the population classification of Section 13472, and St. Louis County, falling within the population classification of Section 13529, were taken from under the provisions of the general statute. However, we believe that this construction cannot be given.

Section 8 of Article VI of the 1945 Constitution of Missouri, is in part as follows:

> "* * A law applicable to any county shall apply to all counties in the class to which such county belongs."

Under this provision a law relating to one county in a certain class must apply to all counties in that class. And according to Section 2 of the Schedule of the Constitution of 1945 all laws inconsistent with the Constitution (Section 8, Article VI) are repealed as of the effective date of the Constitution. This section is in part as follows:

> "* * * All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in full force and effect until July 1, 1946."

If Sections 13472 and 13529 are considered special statutes modifying Section 13416 which is the general statute applicable to all counties of the first class, there will result the situation which the Constitution made express provisions to avoid, that is, a different law will apply to each county in the first class.

Therefore, Sections 13472 and 13529, being inconsistent with the above provision of the 1945 Constitution, were repealed as of the effective date of the Constitution. Since Section 13416, applying to all counties of the first class, is consistent with the above constitutional provisions, it will be held controlling as to Jakcson and St. Louis Counties, which will be allowed under that section, seventy-five cents per day for board of each prisoner.

Section 31 of Article VI of the 1945 Constitution, recognizes St. Louis City as both a city and a county. This provision is as follows:

> "The city of St. Louis, as now existing, is recognized both as a city and as a county unless otherwise changed in accordance with the provisions of this Constitution. As a city it shall continue for city purposes with its present charter, subject to changes and amendments provided by the Constitution or by law, and with the powers, organization, rights and privileges permitted by this Constitution or by law."

Viewing this provision alone, it might be argued that St. Louis City should be classified along with a certain class of counties according to its population, with respect to allowances for board of prisoners. However, Section 655, R. S. Mo. 1939, relating to rules for construction of statutes must be considered. Section 655, paragraph nineteen, reads as follows:

> "Whenever the word 'county' is used in any law, general in its character to the whole state, the same shall be construed to include the city of St. Louis, unless such construction be inconsistent with the evident intent of such law, or of some law specially applicable to such city;"

This provision states that a general law concerning counties shall be construed to include St. Louis City unless there is a similar law specially applicable to that city. Section 13416, allowing a maximum of seventy-five cents per day for board of prisoners, specifically includes St. Louis City by saying that the county court of each county and the municipal assembly of any city not in the county shall set the amount. In either case Section 13416 is applicable to the City of St. Louis, as it is both a general statute and one which is expressly applicable to that city. Therefore, the City of St. Louis is allowed the maximum of seventy-five cents per day for board of each prisoner.

The amount fixed by Section 13416 is certified by the county clerk to the circuit clerk as provided in Section 13417. The reason for this certification is to enable the circuit clerk, prosecuting attorney and circuit judge to properly audit and approve the amount of the charges for board of prisoners which are chargeable as costs in criminal cases against the county or state, as the case may be.

Conclusion

Therefore, it is the opinion of this department that St. Louis County and Jackson County, counties of the first class, and the City of St. Louis are allowed a sum not to exceed seventy-five cents per day as fixed by the county court or the municipal

assembly for board of each prisoner. These are the maximum allowable costs which are chargeable to the state.

Respectfully submitted,

DAVID DONNELLY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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