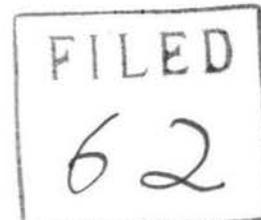


SHERIFFS: Sheriff must pay for own surety bond unless county court specifically requests that sheriff give surety bond. Sheriff has custody of jail but of no other part of court house.

February 1, 1949



Mr. Roy C. Miller
Prosecuting Attorney
Marshfield, Missouri

Dear Sir:

This office is in receipt of your recent request for an official opinion. In your letter you state, in part, as follows:

"One thing I would appreciate an opinion on is the liability of the county court to pay for a surety bond for the sheriff in a county of the fourth class. The bond of which I am speaking is the performance bond required by statute.

"I would also like to request an opinion defining the rights and duties of the sheriff as relates to the custody and care of the jail and court house in general. In our county the jail is on the top floor of the court house and the sheriff has living quarters in the court house."

In answer to your first question I call your attention to an opinion given by this office on January 5, 1948, which I believe answers this question. A copy of this opinion is enclosed.

In answer to your second question we would call your attention to Section 9195, R. S. Mo. 1939:

"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."

Mr. Roy C. Miller

We would further call your attention to Section 9210, R. S. Mo. 1939, which reads:

"Whenever the sheriff of any county in this state shall be of opinion that the jail of his county is insufficient to secure the prisoners that shall be confined therein, it shall be his duty to give notice thereof to the county court, and the said court, if they cannot immediately repair the same, may, if they deem it expedient, allow any sum, not exceeding one hundred and fifty dollars per annum, for the pay of a deputy jailer."

We would also call your further attention to Section 13730, R. S. Mo. 1939, which states:

"The county court of each county shall have power, from time to time, to alter, repair or build any county buildings, which have been or may hereafter be erected, as circumstances may require, and the funds of the county may admit; and they shall moreover, take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage."

We would further call your attention to Section 2480, Art. XIII, Ch. 10, R. S. Mo. 1939, which is as follows:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

We would call your further attention to Section 9214, R. S. Mo. 1939, which states:

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"It shall be lawful for the sheriff of any county of this state, when there shall appear to be no jail, or where the jail of such county shall be insufficient, to commit any person or persons in his custody, either on civil or criminal process, to the nearest jail of some other county; and it is hereby made the duty of the sheriff or keeper of the jail of said county to receive such person or persons, so committed as aforesaid, and him, her or them safely keep, subject to the order or orders of the judge of the court for the county from whence said prisoner was brought."

CONCLUSION

It is, therefore, the opinion of this office that a sheriff must pay for his own surety bond unless the county court specifically request that the sheriff give a surety bond, in which latter case the county court is liable to pay the cost of said bond.

It is the further opinion of this office, in answer to your second question, that a sheriff has custody of the jail but not any other portion of the court house, and that the sheriff cannot order alterations to be made in the jail.

Respectfully submitted,

HUGH P. WILLIAMSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
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