

**SHERIFFS:
STATE HOSPITALS
FOR THE INSANE:**

A county is not liable for the compensation of the sheriff for returning an insane person who escapes from a state hospital.

January 18, 1950

Honorable B. E. Ragland
Director, Division of Mental Diseases
State Office Building
Jefferson City, Missouri



Dear Sir:

I.

This office acknowledges the receipt of the following request from you for an official opinion:

"We have had several inquiries from sheriffs relative to the expense incurred in returning patients to the state hospital from which they escaped. Some of the sheriffs contend that under the new constitution the county bears the expense.

"Will you please advise whether or not the county is liable for this expense?"

Section 9354, R. S. Mo. 1939, provides:

"Should any insane person escape from any state hospital and return to the county from which he was committed, it shall be the duty of the sheriff of said county, upon being notified by the superintendent, forthwith to apprehend him and take him back to the hospital; and the sheriff shall be paid by the steward of the hospital, by order of the superintendent, the same fees as are provided in other cases for the commitment of insane persons to the hospital. No patient who has committed homicide shall be discharged without the consent of the superintendent and the written admission of a majority of the board of managers."

Section 9355, R. S. Mo. 1939, provides:

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"To the Sheriff or other person, for taking a patient to a state hospital or removing one therefrom, upon the warrant of the Clerk, mileage going and returning, at the rate of ten cents per mile, and \$1.00 per day for the support of each patient on his way to or from the hospital shall be allowed; to each assistant allowed by the clerk and accompanying the Sheriff, or other person acting under the warrant of the clerk, \$4.00 per day for the time actually consumed in making said trip said sum, to include all expenses of such assistant. The computation of mileage in each case is to be made from the place of arrest to hospital by the nearest route usually traveled: Provided, that the said Sheriff shall furnish all necessary means of transportation without charge other than as above allowed. The cost specified in this Section shall be paid out of the County Treasury of the proper county."

The above quoted statutes have not been repealed by the Legislature of Missouri and are still in force and effect.

The case of Maxwell v. Andrew County, 146 S.W.(2d) 621, considers the question of the fees and mileage that the sheriff may charge the county and holds:

"It is well established law that the right of a public officer to be compensated by salary or fees for the performance of duties imposed on him by law does not rest upon any theory of contract, express or implied, but is purely a creature of the statute. Gammon v. Lafayette County, 76 Mo. 675; State ex rel. Evans v. Gordon, 245 Mo. 12, 149 S.W. 638; Sanderson v. Pike County, 195 Mo. 598, 93 S.W. 942; Jackson County v. Stone, 168 Mo. 577, 68 S.W. 926; State ex rel. Troll v. Brown, 146 Mo. 401, 47 S.W. 504; Bates v. City of St. Louis, 153 Mo. 18, 54 S.W. 439, 77 Am. St. Rep. 701; Williams v. Chariton County, 85 Mo. 645. In this connection we may point out in passing that the sheriff's deputies are public officers who perform the duties and are subject to the liabilities

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imposed upon the sheriff himself by law. Scott v. Endicott, 225 Mo. App. 426, 38 S.W.(2d) 67."

Since your division is charged with the responsibility of safely keeping and caring for the indigent insane persons of this county by the laws of this state, it is your responsibility to recover and return any escaped patients from the state hospitals. We can find no statutory provision for the payment of the sheriff by the county for returning patients who have escaped from the state hospitals.

Since Section 9354 expressly provides for the payment of the sheriff for returning escaped patients of any state hospital, the superintendent of the hospital, where the escaped insane person had been confined, shall pay the sheriff for returning such person as required by said section. The rate or amount of compensation to be paid the sheriff by the State Hospital is determined by Section 9355, R. S. Mo. 1939.

III.

CONCLUSION

It is the opinion of this office that a county is not liable for the compensation of a sheriff for returning an insane person who escapes from any state hospital. The sheriff shall be paid by order of the superintendent of the hospital from which the person escaped in accordance with the provisions of Section 9354, R. S. Mo. 1939. The amount of compensation to be paid the sheriff is governed by Section 9355, R. S. Mo. 1939.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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