

SHERIFFS:
JAILERS:
COUNTY COURT:

(1) Circuit judge may authorize sheriff in counties of the third class to appoint a jailer to be paid from county funds; (2) the compensation of such jailer should not be included in the board bill for prisoners submitted to the county court, but should be shown as a separate item of expense; (3) Circuit court has no authority to authorize the sheriff to employ a cook; (4) The expense of cook hire may be paid by the county if such is reasonably incurred by the sheriff in boarding prisoners and should be included in the monthly board bill submitted by sheriff to county court.



May 12, 1955

Honorable Charles W. Medley
Prosecuting Attorney
St. Francois County
Farmington, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office, which request reads as follows:

"The Sheriff in our county and the County Court have been having some difficulty over some of the sheriff's expenses and they have requested that I write you asking for an attorney general's opinion.

"The facts are as follows. In March of this year the sheriff presented a bill to the County Court for payment and this bill included \$75.00 for a jailer, \$50.00 for a cook for the jail. Both of these items were separate from the prisoners board bill. The sheriff has not secured a court order authorizing the appointment of either a jailer or a cook. St. Francois County is a third class county. Based on the following facts could you please give me an opinion on the following questions:

"1. Would the County be authorized to reimburse the sheriff for either of these items as they have been presented?

"2. Would it be legal for the Circuit Judge to authorize the sheriff to appoint a jailer to be paid from county funds?

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"3. Would it be proper for the sheriff to include in the board bill for his prisoners the cost of a jailer?

"4. Would it be legal for the Circuit Judge to authorize the sheriff to employ a cook to be paid for from county funds?

"5. Would the county be authorized to pay for a cook if such item was included in the board bill for the prisoners?

"6. Would the county be authorized to pay for a cook that was not included in the county board bill?

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The provisions of our statutes governing the boarding and feeding of prisoners, when confined in the county jail of a county of the third class, are found in Chapter 221, RSMo 1949. Section 221.090 provides as follows:

"1. In each county of the third or fourth class, the sheriff shall furnish wholesome food to each prisoner confined in the county jail. At the end of each month, he shall submit to the county court a statement supported by his affidavit, of the actual cost incurred by him in the boarding of prisoners, together with the names of the prisoners, and the number of days each spent in jail. The county court shall audit the statement and draw a warrant on the county treasury payable to the sheriff for the actual and necessary cost.

* * * * *

The statute requires the sheriff to furnish wholesome food to each prisoner confined in the county jail, and to submit to the county court, at the end of each month, a statement, supported by his affidavit, of the actual cost incurred by him in the boarding of such prisoner, together with the names of said prisoners and the number of days each spent in jail. Said section further directs the county court to audit said statement to determine the actual and necessary cost and draw a warrant on the county treasury payable to the sheriff.

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The preparation of food is, without question, a necessary adjunct to the duty imposed on the sheriff of furnishing wholesome food to prisoners, and if the sheriff undertakes, as the circumstances may require, to have the food prepared rather than obtaining the food already prepared and ready for serving, then we are of the opinion that the employment of a cook would be an actual and necessary cost incurred by the sheriff in discharging the aforementioned duty, and that such expense should be included in the monthly statement submitted to the county court. A more complete discussion relating to the duty of the sheriff in furnishing food to prisoners is contained in an opinion to D. R. Jennings, Prosecuting Attorney, Montgomery County, under date of March 10, 1952, a copy of which is enclosed herewith for your information.

Therefore, it is our opinion, assuming the necessity of a cook, that the county court would be authorized to pay for cook hire, if such item was included in the board bill for prisoners, since such would constitute an actual expense to the sheriff in furnishing food to such prisoners. Since it is made the duty of the sheriff to furnish food to prisoners, and since there is no other statutory provision authorizing the county to employ a cook to prepare food, we are further of the opinion that the county would not be authorized to pay for cook hire separate and apart from the board bill submitted by the sheriff, whether authorized by the circuit court or not, a matter for which we find no authority.

Section 221.020 provides that the sheriff shall act as jailer, and further provides that said officer may appoint a jailer under him. Said section more fully provides as follows:

"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."

We are unable to find any provision in Chapter 221 granting compensation to a person hired as jailer; however, your attention is directed to Section 57.250, RSMo 1949, which provides as follows:

"The sheriff in counties of the third and fourth classes shall be entitled to such number of deputies and assistants, to be appointed by such official, with the approval of the judge of the circuit court,

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as such judge shall deem necessary for the prompt and proper discharge of his duties relative to the enforcement of the criminal law of this state. The judge of the circuit court, in his order permitting the sheriff to appoint deputies or assistants, shall fix the compensation of such deputies or assistants. The circuit judge shall annually, and oftener if necessary, review his order fixing the number and compensation of the deputies and assistants and in setting such number and compensation shall have due regard for the financial condition of the county. Each such order shall be entered of record and a certified copy thereof shall be filed in the office of the county clerk. The sheriff may at any time discharge any deputy or assistant and may regulate the time of his or her employment."

The latter-noted section provides the sheriff may, upon order and approval of the circuit court, appoint deputies and assistants. Said section further provides that the judge of the circuit court shall fix the compensation of such deputies or assistants. We are of the opinion that a jailer, appointed by order and approval of the circuit court, would be an assistant as contemplated in Section 57.250, and that the compensation as fixed would be a proper charge against the county. Absent such court order, however, we are of the opinion that the county court would not be authorized to expend county funds for the payment of a person appointed as jailer. In this regard, see the case of Alexander vs. Stoddard County, 210 S.W.2d 107, 1.c. 109, wherein the court said:

" * * * * "As a general rule compensation for services rendered by assistants, deputies, and other employees can be allowed directly to them or to their superiors only as authorized by law; and where no provision is made for the payment, or for the appointment or employment of deputies and assistants, the latter must look exclusively to their employers for compensation, and such employer cannot look to the county for reimbursement. * * * * "

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We are unable to see any relation between a jailer acting as such and the boarding of prisoners, and are of the opinion that the sheriff should not include the expenses of a jailer in the board bill submitted to the county court. Fees or reimbursement may be allowed to an official only as provided by statute, and such statutes are construed strictly against the officer. See Nodaway County vs. Kidder, 129 S.W.2d 857.

CONCLUSION

Therefore, it is the opinion of this office that the circuit court may authorize a sheriff of a county of the third class to appoint a jailer, and that the compensation of such person, as fixed by the circuit court, should be billed to the county as a separate item and not included in the board bill for prisoners required to be submitted to the county court by the sheriff.

We are further of the opinion that a county of the third class would be authorized to pay for cook hire, if such expense is reasonably incurred by the sheriff in furnishing food to the prisoners confined in the county jail, and that such expense should be included in the monthly board bill submitted by the sheriff to the county court, since there exists no authority for the appointment of a cook in connection with the feeding of county prisoners or the incurring of such expense by the county, other than as may be incident to the duties of the sheriff.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Yours very truly,

John M. Dalton
Attorney General

DDG/vtl
Enclosure: 3-10-52 to D.R.Jennings