

SHERIFF:  
COUNTY COURT:

Section 57.445 V.A.M.S. 1960 Pocket Part, is interpreted as conferring discretion upon the county court of second, third and fourth class counties to determine whether sheriffs in such counties should be provided living quarters.

January 26, 1961



Honorable William E. Seay  
Prosecuting Attorney  
Salem, Missouri

Dear Mr. Seay:

This will acknowledge receipt of your letter dated January 13, 1961, in which you request an official opinion from this office. Your letter is as follows:

"I have been asked by the sheriff of Dent County to write you with reference to the construction given by your office to Chapter 57, Section 445 of the 1949 Revised Statutes. Sheriff Blackwell wishes to know if it is mandatory or discretionary with the County Court to pay him for the rental of a dwelling.

If you have any previous opinions construing this section, I will be happy to receive them."

This office has not previously construed Section 57.445 V.A.M.S. 1960 Pocket Part (all statutory references shall be to V.A.M.S. unless otherwise designated). This section reads as follows:

"In all counties of the second, third, and fourth classes, the county court may provide living quarters for the sheriff, in addition to the compensation authorized by law."

This statute was approved by the Sixty-Eighth General Assembly of the State of Missouri on July 7, 1955, Laws 1955, p. 352 §1. The enactment of this statute also repealed Section 57.420 which dealt with the same subject matter. This section is as follows:

"In addition to the compensation provided in sections 57.390 and 57.400 the county court may, in its discretion, furnish living quarters for the sheriff."

It thus becomes imperative that both of these statutes be read together. Section 57.445 replaced section 57.420 and included second class counties within the provision allowing County Courts of third and fourth class counties to provide living quarters for sheriffs. The language of the two statutes differ somewhat when they empower the county court with the authority to supply these accommodations. In the earlier statute it says "the county court may, in its discretion, furnish living quarters for the sheriff." While in the present statute it says "the county court may provide living quarters \* \* \*". Does the elimination of the phrase "in its discretion" substantially change the meaning of the statute? Are the county courts mandatorily required to supply living quarters for sheriffs in second, third and fourth class counties? It is the opinion of this office that these questions should be answered in the negative.

The above statement is based upon not only the legislative history of Section 57.445, supra, but also upon the interpretive legislative intention of the word "may". The use of this word has an ordinary and generally accepted meaning and the presumption is that the legislature intended this word to be taken in its plain and usual sense, Section 1.090 V.A.M.S. At 82 C.J.S., Statutes §380, p. 877 it is stated that, "As a general rule the word 'may' when used in a statute, is permissive only, and operates to confer discretion, \* \* \*." This same general provision is found at 50 Am Jur., Statutes § 28, p. 50 where it says that "\* \* \* a provision couched in permissive terms is generally regarded as directory or discretionary. This is true of the word 'may', \* \* \*". The word "may" was analyzed in Lansdown v. Faris, 8th Circuit Court of Appeals, 66 F. 2d 989. At page 941 the court said "This word, in ordinary meaning, carries no thought of compulsion--- it is permissive or power giving and not at all compelling, discretionary and not mandatory. [citing cases]." Many cases support the proposition that where public authorities are authorized to perform an act to the benefit of an individual, then the word "may" is not interpreted to mean "must", but confers broad discretion upon such public authority as to whether the allowance should be made and to what extent. An illustrative case is Whitehurst v. Singletary, 77 Ga. App. 811, 50 S.E. 2d 80, In this case the Georgia Court said at 50 S.E. 2d, loc. cit. 84, "May ordinarily denotes discretion when used in a statute." For Missouri cases which support the above theory see State ex rel McClure v. Dinwiddie, 358 Mo. 15, 213 S.W. 2d 127; and State ex rel Pawkes v. Bland, 357 Mo. 634, 210 S.W. 2d 31.

Honorable William E. Seay

CONCLUSION

Section 57.445 V.A.M.S. 1960 Pocket Part, is interpreted as conferring discretion upon the county court of second, third or fourth class counties to determine whether sheriffs in such counties should be provided with living quarters.

The foregoing opinion, which I hereby approve, was prepared by my assistant Eugene G. Bushmann.

Yours very truly,

THOMAS F. EAGLETON  
Attorney General

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