

Sheriffs' Bills:  
Boarding of Prisoners:

Sheriffs' bills submitted to the county clerk for board of prisoners must be based on actual cost in accordance with the mandate of Section 221.090 (1).

October 12, 1964

Opinion No. 322

Honorable Alden S. Lance  
Prosecuting Attorney  
County of Andrew  
415 West Main Street  
Savannah, Missouri



Dear Mr. Lance:

This is in answer to your letter of September 17, 1964, requesting an official opinion of this office in which you ask the following question concerning sheriff bills submitted to the county court by the Andrew County sheriff for board of misdemeanants who have never been imprisoned in the county jail:

"The State Highway Department has a weight station in Andrew County, Missouri, which is a county of the third class, and there are a good many misdemeanants taken to the County Jail by the Highway Patrol. These individuals are turned over to the Sheriff who then 'books' them by making out his standard information card. The Sheriff then allows these individuals to contact an attorney who may get the necessary information and a deposit of money to handle the individual's case in Court, and the misdemeanant is then released to go on his way, or, if it is necessary for the misdemeanant to remain until the next day for some reason or other, the Sheriff, after 'booking' him allows him to go to a local hotel or motel with instructions to report to the Magistrate Court or the Prosecuting Attorney's office the following morning. In neither case does the Sheriff feed or provide actual sleeping quarters for the individual. I wish to point out that these situations arise when the Highway Patrolmen take these individuals to the County Jail during the nighttime when

the offices of the Magistrate and the Prosecuting Attorney are closed, or on holidays when the same situation exists. The Sheriff then submits to the County Court a bill for \$1.25 for board for these individuals and I wish to know whether or not the County Court properly allows the same. The sections of Missouri Law that appear to apply to this situation are 57.290 and 221.090 to 221.110."

Section 221.090 (1), RSMo 1959, dealing with the boarding of prisoners provides:

"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." (Emphasis added).

The above statute clearly provides that the sheriff is to submit a monthly statement for the "actual cost incurred by him in boarding of prisoners, \* \* \*." This can only be read to mean "actual cost" of boarding prisoners. "Actual cost" is defined in Black's Law Dictionary, 4th Edition, 1951, as "the exact sum expended or loss sustained rather than the average or proportional part of the cost."

Your facts indicate that the sheriff's bills are submitted to the county court on the basis of \$1.25 per day for each prisoner without regard to the fact that some prisoners are not furnished board. Section 221.090 (1) expresses a clear legislative intent that sheriffs' bills for board of prisoners are to be submitted only for "actual cost". If the Legislature had intended some other basis for computing the sheriff's bill, they could have done so easily.

In the case of Maxwell v. Andrew County, 347 Mo. 156, 146 SW2d 621, the sheriff had submitted to the county court a bill of \$75.00 as expenses for his automobile used in official business. This figure was not based upon the statutory requirement of

actual mileage traveled as the basis of computing the bill. The sheriff admitted in his testimony that \$75.00 was only an approximate guess as to the expenses of operating his automobile on official business. The Supreme Court of Missouri held the sheriff's bill to be improper and stated:

"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. \* \* \*"

Thus, whether the sheriff's bill concerns "actual mileage" or "actual cost", the statutes are mandatory and require strict conformity. It is therefore the opinion of this office that Section 221.090 (1) requires that sheriffs' bills for boarding of prisoners in third and fourth class counties be based only upon "actual cost" and not on an estimate or on the number of prisoners.

#### CONCLUSION

Sheriffs' bills submitted to the county court for boarding of prisoners must be based on actual costs in accordance with the mandate of Section 221.090 (1).

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Jim DeNeen.

Very truly yours,

  
THOMAS F. EAGLETON  
Attorney General