



ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

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OPINION LETTER NO. 145-85

John G. Meyer
Prosecuting Attorney, Perry County
17 North Main Street
Perryville, Missouri 63775

Dear Mr. Meyer:

This letter is in response to your question asking:

May a county governing body, under Section 221.105 RSMo charge a municipality within the county limits or another county per diem costs for the incarceration of prisoners in excess of the charges allowable to the state, to-wit: \$8.00 per day per person?

Section 479.180, RSMo 1978, states:

If a municipality has no suitable and safe place of confinement, the defendant may be committed to the county jail by the judge, and it shall be the duty of the sheriff, if space for the prisoner is available in the county jail, upon receipt of a warrant of commitment from the judge to receive and safely keep such prisoner until discharged by due process of law. The municipality shall pay the board of such prisoner at the same rate as may now or hereafter be allowed by law to such sheriff for the keeping of other prisoners in his custody.

(Emphasis added.)

John G. Meyer

Section 479.180, RSMo 1978, was last reenacted as part of the Court Reform and Revision Act of 1978, House Bill 1634, 1978 Mo. Laws 696, 887. The relevant language of the 1978 enactment was carried forward from Section 98.010, RSMo 1969.

Section 221.105, RSMo Supp. 1984, states:

1. The governing body of any county and of any city not within a county shall fix the amount to be expended for the cost of incarceration of prisoners confined in jails or medium security institutions. The per diem cost of incarceration of these prisoners chargeable by the law to the state, shall be determined, subject to the review and approval of the office of administration.

2. When the final determination of any criminal prosecution shall be such as to render the state liable for costs under existing laws, it shall be the duty of the sheriff to certify to the clerk of the circuit court or court of common pleas in which the case was determined the total number of days any prisoner who was a party in such case remained in the county jail. It shall be the duty of the county court to supply the cost per diem for county prisons to the clerk of the circuit court on the first day of each year, and thereafter whenever the amount may be changed. It shall then be the duty of the clerk of the court in which the case was determined to include in the bill of cost against the state.

3. The actual costs chargeable to the state shall be seventy-five percent of the allowable per diem cost or eight dollars per day per person, whichever is less.

Section 221.105, RSMo Supp. 1984, originated in Senate Committee Substitute for House Bill 1130, 1976 Mo. Laws 686, and repealed Section 221.090, RSMo Supp. 1975. Prior to 1976, the repealed statute required the county court

John G. Meyer

to pay the sheriff his actual and necessary costs of incarcerating prisoners. See Opinion No. 203, Fritz, 1965.

It would appear that the language in what is now Section 479.180, RSMo 1978, referring to the sheriff's rate for keeping prisoners originally referred to the now repealed formula in Section 221.090, RSMo (repealed), allowing the sheriff to recover his actual and necessary costs.

The 1976 legislation resulting in what is now Section 221.105, RSMo Supp. 1984, replaces the "actual and necessary costs" formula with the following: First, subsection 1 of this statute requires the governing body of any county and the City of St. Louis to fix the amount to be expended for the cost of incarceration of prisoners -- the regular per diem costs. Second, Subsection 1 of the statute also requires the governing body of the county or the City of St. Louis to determine the per diem cost of incarceration chargeable to the state, which is subject to review and approval by the Office of Administration. Subsection 3 of the statute limits the costs chargeable to the state to seventy-five percent (75%) of the "regular" per diem cost, or eight dollars (\$8.00), whichever is less.

Thus, Section 221.105, RSMo Supp. 1984, requires the establishment of two per diem rates for the costs of incarceration -- "regular" rate and a "state" rate. We believe the "regular" rate should be used for purposes of Section 479.180, RSMo 1978. See, e.g., Section 221.260, RSMo 1978 (costs to be charged for inter-county prisoner transfers); Section 221.290, RSMo 1978 (costs to be charged the United States for use of county jails). Only the State of Missouri is benefited by the "state rate" calculated under subsections 1 and 3 of Section 221.105, RSMo Supp. 1984.

Therefore, it is our view that Section 479.180, RSMo 1978, allows counties to charge cities for the costs of incarcerating municipal prisoners at the rate determined under subsection 1 of Section 221.105, RSMo Supp. 1984, without regard to the limitations on charges to the state contained in subsection 3 of Section 221.105, RSMo Supp. 1984.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General