

SHERIFFS: Payment of salary to jailer or to sheriff out of county fund is not authorized.

June 6, 1940

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Hon. Charles T. Bloodworth, Jr.
Prosecuting Attorney, Butler County
Poplar Bluff, Missouri

Dear Sir:

Receipt is hereby acknowledged of your letter of May 29, 1940, requesting an opinion, as follows:

"Recent auditors reports concerning offices of Butler County officials revealed that the Sheriff of this county had been receiving thirty dollars per month as part compensation for employment of a jailer to look after the Butler County jail.

"The County Court paid this money to the Sheriff to employ a jailer to look after the condition of the jail and to be on hand at times when the Sheriff or his deputies could not be in their offices and to look after the condition of sanitation of the jail. Prior sheriffs of this county had been allowed fifty dollars a month for compensation of this nature.

"The recent auditors report makes the contention that the Sheriff owes this money back to the court. I presume that they state this contending that there is no statute permitting the County Court to pay the Sheriff compensation for jailers hire. Before bringing suit or before attempting to collect this money, I would like to know whether

or not it is your opinion that the County Court cannot compensate the Sheriff for the hiring of a jailer. It seems to me that under the general law pertaining to County Courts, giving them the power to take care of county property, that they would have a right to employ a man of this capacity or compensate the Sheriff for such employment of a jailer.

"Will you please advise me at your earliest possible convenience whether or not the County Court could employ a jailer to look after the county jail?"

The general law covering jails and jailers is found in Article 9, Chapter 44, Revised Statutes of Missouri, 1929.

Section 8526, R. S. No. 1929, which authorizes the sheriff to appoint a jailer, is 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; but no justice of the peace shall act as jailer, or keeper of any jail, during the time he shall act as such justice."

There are numerous other sections pertaining to the duties of sheriff or jailer, and Section 8549, R. S. No. 1929, expressly provides for the removal of sheriff or jailer for failure to perform certain duties. This section is as follows:

"The said sheriff or keeper of the jail may also, in the discretion of the said court, be removed from office, and rendered incapable of holding or executing the same thereafter."

There is no section of the statute specifically providing for any compensation for a jailer except the fees mentioned in this Article and Chapter, supra, for the performance of the duties by the sheriff or jailer in connection with the management and control of the jail and prisoners and boarding of the prisoners.

Section 8541, R. S. Mo. 1929, provides for the appointment of a deputy jailer under certain circumstances and for paying to such deputy jailer compensation not to exceed one hundred and fifty dollars per annum out of county funds.

A search of the entire Article fails to reveal any provision made for paying to the jailer a fixed salary out of county funds, and, in order for any such payment to be made there must be statutory authorization, as stated in State ex rel. Linn County v. Adams, 172 Mo. 1, l. c. 7:

"* * * For it is well settled law, that a right to compensation for the discharge of official duties, is purely a creature of statute, and that the statute which is claimed to confer such right must be strictly construed. (Jackson County v. Stone, 168 Mo. 577; State ex rel. v. Wallbridge, 153 Mo. 194; State ex rel. v. Brown, 146 Mo. 401; State ex rel. v. Wofford, 116 Mo. 220; Givens v. Daviess Co., 107 Mo. 603; Gammon v. Lafayette Co., 76 Mo. 675.)"

The Legislature, having failed to provide any salary for a jailer, and, having made, in the same Article, provision for payment of a salary to deputy jailers in certain circumstances, would indicate that its intention was that the jailer, appointed by virtue of the authority of Section 8526, should receive his compensation in the way of fees provided for taking care of prisoners, committing prisoners, etc.

In the case of Moutier v. Stumpe, 39 Mo. App. 161, a case involving the fees due for boarding prisoners, the St. Louis Court of Appeals, l. c. 164, said:

"The idea that the jailor of a county is only the servant or employe of the sheriff cannot be harmonized with the foregoing provisions of the statute. It is true that the jailor owes his position to the sheriff, and it is equally true that he holds it during the pleasure of his superior, but this does not necessarily make him a servant or employe. That the keeper of a county jail holds an independent official position, is to be gathered from the entire statute on the subject, and it is rendered incontrovertible by section 6094, which expressly provides, that the keeper of the jail may, by an order of court, be removed from office, and rendered incapable of holding or executing the same thereafter. The sheriff himself may act as jailor, but, when he appoints some one else to the position, he thereby creates an independent official, upon whom the statute imposes certain official duties. It follows from this that the plaintiff's compensation for boarding the prisoners did not depend upon any private contract with Ehlers, but was fixed and regulated by section 6078, supra, which provides, that, if the jailor of a county shall furnish any prisoner with board, he shall be allowed therefor such compensation as shall be fixed by law."

Section 6094 mentioned in the above quotation is now Section 8549, Revised Statutes of Missouri, 1929.

CONCLUSION.

In view of the fact that the Legislature made no provision for paying a salary to a jailor out of county funds, that there are certain fees to be paid to the sheriff or jailor in connection with the performance of duties in connection with the jail and board and management of the prisoners, and the decision above quoted from, it is the

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opinion of this department that the payment of a salary out of county funds to a jailer in your county is an unauthorized expenditure.

Also, enclosed herewith is copy of an opinion, dated September 10, 1937, written by S. V. Medling, Assistant Attorney-General, upon the subject of payment of salary to deputy sheriffs out of county funds.

Respectfully submitted,

W. O. JACKSON
Assistant Attorney-General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney-General

WOJ:CP