

COUNTY COURT: Court, in its discretion, may allow fee to sheriff, involving use of an ambulance in transporting insane county patient to state hospital.

July 24, 1943



Mr. C. R. Bothwell, Sheriff
Pettis County
Sedalia, Missouri

Dear Sheriff Bothwell:

This will acknowledge receipt of your letter of recent date which, omitting caption and signature, is as follows:

"I would like to have your opinion on the following: Where the Sheriff conveys a patient to the hospital at Fulton, Missouri, and is compelled to use an ambulance to make the trip on account of the physical condition of the patient. Who pays the expenses of the ambulance, the Sheriff or the County? In other words is the Sheriff entitled to his regular mileage besides the cost of the ambulance.

"I get \$17.20 for a trip to Fulton and if I pay the expenses of the ambulance which is \$15.00 I only make \$2.20 out of the trip. This is what the County Court wants to allow me for this kind of trip. * * * * *

Section 4342 R. S. Mo., 1939, is devoted to the statement that there is a penalty against an officer for the exaction of fees to which the officer is not entitled. It is the obvious intention of the Legislature to set out in detail the specific fees and the amount thereof allowed various officials in discharging the official duties. It is seen, therefore, that unless specifically allowed by

statute no fee may be charged by an officer for his services. We further direct your attention to the case of *Smith v. Pettis County*, 136 S. W. 2d 282, l. c. 285, from which the court discusses the right of a public official to compensation for the performance of any duty, and in the discussion we find this language:

"The rule is established that the right of a public official to compensation must be founded on a statute. It is equally established that such a statute is strictly construed against the officer. *Nodaway County v. Kidder*, Mo. Sup. 129 S. W. 2d 857; *Ward v. Christian County*, 341 Mo. 1115, 111 S. W. 2d 182. * * * "

Turning now to those sections of our statutes which concern the county court and the power to send to state hospitals their insane poor, we find at Section 9328 R. S. Mo., 1939, a provision that the county court shall have power to send to the state hospitals such of their insane poor as may be entitled to admission thereto.

Section 9339 R. S. Mo., 1939, provides that the county court may, upon a hearing, cause a suitable order to be entered of record sending an insane poor patient to a state hospital. Such order shall further set forth that the person found to be insane is a fit subject to be sent to the state hospital, and the clerk of the court forthwith shall forward a certified copy of said order to the superintendent of the hospital, accompanying the same with the request of admission of the person found to be insane to the hospital.

Section 9341 R. S. Mo., 1939, provides that the clerk of the county court shall issue a warrant to the sheriff of the county, or any other suitable person, commanding the ar-

rest of the insane person and directing that the patient be conveyed to a designated state hospital. This section further provides that if the clerk be satisfied of its necessity he, the clerk, may authorize one or more assistants to be employed to assist in conveying the person on the point of arrest to the designated hospital. Section 9342 R. S. Mo., 1939, provides that the relatives of an insane person may have the right to convey the patient to the hospital.

Section 9355 R. S. Mo., 1939, reads as follows:

"To the Sheriff or other person, for taking a patient to a state hospital or removing one therefrom, upon the warrant of the Clerk, mileage going and returning, at the rate of ten cents per mile, and \$1.00 per day for the support of each patient on his way to or from the hospital shall be allowed; to each assistant allowed by the clerk and accompanying the Sheriff, or other person acting under the warrant of the clerk, \$4.00 per day for the time actually consumed in making said trip said sum, to include all expenses of such assistant. The computation of mileage in each case is to be made from the place of arrest to hospital by the nearest route usually traveled: Provided, that the said Sheriff shall furnish all necessary means of transportation without charge other than as above allowed. The cost specified in this Section shall be paid out of the County Treasury of the proper county.

Directing your attention now to Chapter 55, Article 3, Sections 9590 to 9601, inclusive, which sections concern themselves with the support of the county poor, we find this

language particularly at Section 9590:

"Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants. "

We also quote Sections 9593 and 9594, respectively, as these sections seem to apply in this instant case:

"The county court of each county, on the knowledge of the judges of such tribunal, or any of them, or on the information of any justice of the peace of the county in which any person entitled to the benefit of the provisions of this article resides, shall from time to time, and as often and for as long a time as may be necessary, provide, at the expense of the county, for the relief, maintenance and support of such persons."

"The county court shall at all times use its discretion and grant relief to all persons, without regard to residence, who may require its assistance."

CONCLUSION

It is, therefore, the opinion of this department that the sheriff or other suitable person designated by the county court for the purpose of transporting an insane poor patient to a state hospital under direct order of the county court is entitled to mileage at the rate of ten cents per mile each way from the place of arrest to the state hospital by the nearest

July 24, 1943

route usually traveled. In addition, he is entitled to One Dollar (\$1.00) per day for support of patient on the way to or from the hospital, provided the clerk of the court is satisfied of its necessity. The clerk may also authorize one or more assistants to be employed to assist the sheriff or other person delegated to transport the patient. The assistant, or assistants, shall receive Four Dollars (\$4.00) per day for time actually consumed in accompanying sheriff, this said sum to include all the expenses of the assistant or assistants. The sheriff, or other person designated, shall furnish all necessary means of transportation in taking a patient from the point of arrest to the hospital.

The fees and compensations shall be paid out of the county treasury of the county sending the patient to the state hospital. Furthermore, no specific statute authorizes payment of ambulance fees by the county court. However, the court may, in its discretion, under Section 9593, "provide, at the expense of the county, for the relief, maintenance and support of such persons." And further, the county court in providing for an ambulance for an insane poor person is exercising the discretion allowed under statutes above quoted.

Respectfully submitted,

L. I. MORRIS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

LIM:FS