CRIMINAL LAW: BOARD OF PRISONERS; WHEN THIRD OR FOURTH CLASS COUNTY NOT LIABLE FOR:

One confined in county jail of third or fourth class county for twenty hours for alleged violation of city ordinance without warrant, process or formal charge against him, is not a prisoner within meaning of Sec. 221.090 RSMo 1949; county not liable for person's board bill to sheriff, since alleged violation of city ordinance is not crime, and person is not confined for violation of any criminal laws of Missouri.

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September 4, 1952

9-5-52

Honorable John R. Caslavka
Prosecuting Attorney of
Dade County
Greenfield, Missouri

Dear Sir:

Your recent request for a legal opinion of this department has been received and reads as follows:

> "Section 221.090 revised statute of Missouri 1949 compells the sheriff among other things to furnish wholesome food to each prisoner confined in the County Jail.
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> "This section further commands him to submit to the County Court at the end of each month a statement of the actual cost incurred by him in the boarding of these prisoners and commands the Court to draw a warrant on the County Treasurer payable to the Sheriff for his actual and necessary costs.
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> "A question has arisen in this County concerning the difinition of the word 'prisoner'.
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> 1. Is a man who is confined in the County jail by the sheriff for causing a nuisance on the streets or appearing intoxicated on a public street in violation of a municipal ordinance or who disturbs someones peace and is confined by the sheriff for the twenty (20) hour period

and on whom no affidavit is executed, information prepared and filed or warrant issued a prisoner within the meaning of the hereinabove numbered section so as to make the County liable for his board bill."

We understand the inquiry to be whether one confined in the county jail by the sheriff for an alleged violation of a city ordinance for a period of twenty four hours, without any formal charge ever having been filed against such person for having violated a particular city ordinance, is a prisoner within the meaning of Section 221.090 RSMo 1949, so as to render the county liable for his board bill.

Section 221.090 RSMo 1949, provides the method of payment to the sheriff by the county of the amount of the board due the sheriff for keeping each prisoner in the county jail in third and fourth class counties, and reads as follows:

"1. 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.

"2. When the final determination of any criminal prosecution in a county of the third or fourth class shall be such as to render the state liable for costs under existing laws, it shall be the duty of the county clerk to certify to the clerk of the circuit court or court of common pleas in which the case was determined, the amount due the county for boarding any prisoner who was a party in such case. It shall then be the duty of the clerk of the court in which the case was determined to include in the bill of costs against the state, all fees which are properly chargeable to the state for the board of such prisoners."

Paragraph 2, of Section 221.090, supra, specifically provides that upon the final determination of a criminal prosecution in a third or fourth class county in those cases in which the state shall be liable for the court costs, it shall pay to the county the amount expended for board of a prisoner in the county jail who was a party to such

case, and that said amount shall be included in, and constitute a part of the cost bill of such case. Cases of this class would include only felony cases, for which the state became liable for costs.

Section 550.030 RSMo 1949, provides the conditions under which the county shall be liable for the payment of court costs, in misdemeanor cases and reads as follows:

> "When the defendant is sentenced to imprisonment in the county jail, or to pay a fine, or both, and unable to pay the costs, the county in which the indictment was found or information filed shall pay the costs, except such as were incurred on the part of the defendant."

Section 556.010 RSMo 1949, defines the term criminal offense, and reads as follows:

> "The terms 'crime', 'offense,' and 'criminal offense,' when used in this or any other statute, shall be construed to mean any offense, as well misdemeanor as felony, for which any punishment by imprisonment or fine, or both, may by law be inflicted."

By this definition, it is noted that all criminal offenses under Missouri statutes fall into either one of two classes, namely, felonies and misdemeanors; with this classification in mind, it is our thought that Section 221.090, supra, relating to the procedure for payment of the board of prisoners in the county jail to the sheriff by the county court can refer only to those prisoners held in custody charged with some criminal offense under the statutes, or in connection with a criminal case, in which such prisoner is a party.

By the above definition it appears that no reference is made to a city ordinance, and that it does not fall within either classification included in the term, criminal offense. Therefore, it follows that the violation of a city ordinance is not a crime, which has repeatedly been held to be the law in Missouri by the courts in numerous cases. In the case of State v. Mills, 272 Mo. 526, which seems to be a leading case on the subject the court said at l.c. 537:

> "We are of the opinion that neither by our decisions, nor by statute, is a conviction for vagrancy in a city court 'a criminal offense' within the purview of the above quoted statute. For while the procedure, or some of it, in a prosecution for the

violation of a town or city ordinance is criminal in form, that is, it follows the forms of the criminal procedure, we have nevertheless uniformly held that it is but a civil action to recover a debt or penalty due the city for the infraction of its ordinances. (St. Louis v. Tielkemeyer, 226 Mo. l.c. 141; State v. Muir, 164 Mo. 610.)

"In the Tielkemeyer case, supra, it was said by VALLIANT, J.,:

"'In City of Kansas v. Clark, 68 Mo. 588, it was held that a prosecution under a city ordinance for keeping a gambling table contrary to the ordinance was not a prosecution for a crime, but a civil suit to recover a penalty, the court saying: "Nor do we regard the violation of the ordinance under consideration as a crime, since a crime . . . is an act committed in violation of a public law" (4 Black. Com., 5); a law co-extensive with the boundaries of the State which enacts it. Such a definition is obviously inapplicable to a mere local law or ordinance, passed in pursuance of, and in subordination to, the general or public law, for the promotion and preservation of peace and good order in a particular locality, and enforced by the collection of a pecuniary penalty." That language was quoted and followed as the correct rule of law in State v. Muir, 164 Mo. 610, in which it was held that a conviction under a city ordinance against gaming was not a bar to a subsequent prosecution for the same act under the State statute; in that case the court said that the prosecution under the city ordinance was a civil action, and quoted Cooley's Const. Lim. (6 Ed.), p. 239, to sustain the doctrine. In Canton v. McDaniel, 188 Mo. 207, l.c. 228, the converse of the proposition was also held, that is, that an acquittal in a prosecution under the State statute was not a bar to a prosecution to recover the penalty prescribed in a city ordinance for the same act. In City of St. Louis v. DeLassus, 205 Mo. 578, it was again said that a prosecution under a city ordinance to recover a penalty was a civil action, and that an ordinance was not invalid because it forbade and imposed a penalty for an act which the State statute declared to be a crime and for which it prescribed a penalty, and also that the ordinance was not invalid because it imposed a higher pecuniary penalty for the offense than that imposed by the statute."

Again in the case of Meredith v. Whillock, 173 Mo. App. 542, the court held that the violation of a city ordinance was not a criminal offense, or that the ordinance was not even law. At. l.c. 553, the court said:

> "Section 4926, Revised Statutes 1909, is as follows:
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> "'Sec. 4926. "Criminal offense." - The terms "crime," "offense," and "criminal offense," when used in this or any other statute, shall be construed to mean any offense, as well misdemeanor as felony, for which any punishment by imprisonment or fine, or both, may by law be inflicted.'"
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> "That a city ordinance is not law is obvious. 'An ordinance is defined to be a "rule or regulation adopted by a municipal corporation." (And. Law Dict. p. 738.) The terms "by-laws," "ordinances," and municipal regulations" have substantially the same meaning, and are defined to be "the laws of the corporate district, made by the authorized body, in distinction from the general laws of the State." They are local regulations, for the government of the inhabitants of the particular place. (State v. Lee, 29 Minn. 451-453, 13 N.W. 913, and cases cited.) In the case of Baldwin v. City of Philadelphia, 99 Pa. St. 170, the court say that an ordinance of the councils of a municipality, though binding upon the community affected by it, is not a 'law' in the legal sense. It is not prescribed by the supreme power of the State, from which alone a law can emanate, and it is not of general authority throughout the commonwealth.' (Mayor, etc., of Rutherford v. Swink, 35 S.W. (Tenn.) 554, 555. See, also McInerney v. City of Denver, 29 Pac. (Colo.) l.c. 519; City of Greeley v. Hamman, 20 Pac. 1; State v. Fourcade, 40 Am. St. Rep. (La.) 249.)"

It seems that the detention of the person by the sheriff in above statement of facts was made under authority of Section 544.170 RSMo 1949, which reads as follows:

> "All persons arrested and confined in any jail, calaboose or other place of confinement by any peace officer, without warrant or other process, for any alleged breach of the peace or other criminal offense, or on suspicion thereof, shall be discharged from said custody within twenty hours from the time of such arrest, unless

> they shall be charged with a criminal offense by the oath of some credible person, and be held by warrant to answer to such offense, and every such person shall while so confined, be permitted at all reasonable hours during the day to consult with counsel or other persons in his behalf; and any person or officer who shall violate the provisions of this section, by refusing to release any person who shall be entitled to such release, or by refusing to permit him to see and consult with counsel or other persons, or who shall transfer any such prisoner to the custody or control of another, or to another place, or prefer against such person a false charge, with intent to avoid the provisions of this section, shall be deemed guilty of a misdemeanor."

It is noted that this section authorizes the detention of such persons (1) for any alleged breach of the peace; (2) or other criminal offense; (3) or on suspicion thereof, and that no peace officer can detain a person for twenty hours under this section for any other reasons than those specified.

One confined in the county jail by the sheriff for twenty hours for an alleged violation of a city ordinance or ordinances, under the circumstances mentioned in the opinion request is not confined for an alleged breach of the peace, or other criminal offense or for investigation in connection therewith, under the criminal laws of Missouri.

We have pointed out above that the violation of a city ordinance is not a criminal offense or a violation of the criminal laws of Missouri.

The person confined in jail, and referred to above, is not legally confined under authority of Section 544.170; that section having no application to the imprisonment of persons for the alleged violation of city ordinances.

Since the person so confined, is not charged with a criminal offense; either a felony or misdemeanor under the Missouri statutes, or has not been convicted of any such offense; he is not a prisoner within the meaning of Section 221.090, supra, and under such circumstances the county would not be liable to the sheriff for the board bill of such person confined in the county jail.

CONCLUSION

It is therefore the opinion of this department that when a sheriff of a third or fourth class county confines one in the county jail of

Honorable John R. Caslavka

said county for an alleged violation of a city ordinance, without any formal charge ever having been made, warrant or other process issued and served upon him, and such person was confined in said county jail for a period of twenty hours, such person is not a prisoner within the meaning of Section 221.090 RSMo 1949, so as to render the county liable to the sheriff for the amount of money expended by the sheriff for the board of the person so confined in said county jail.

Respectfully submitted,

PAUL N. CHITWOOD
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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