

SHERIFFS: In a county of 18,000, the sheriff, and not the county pays the jailer.

January 22, 1943



Mr. Joe Lyons
Sheriff
Carroll County
Carrollton, Missouri

Dear Sir:

This is in reply to your request for an opinion, under date of January 19, 1943, which reads as follows:

"Carroll County has a population of 18,000. Am I authorized to employ a jailer at the expense of the County, provided such expense is set up in the County Budget?"

According to the last federal census, the population of Carroll County was 17814. By reason of this population the sheriff of Carroll County is not on a salary, but on a fee basis. The appointment of a jailer is provided for in Section 9195 R. S. Missouri, 1939, which reads 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."

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The duties of the jailer are set out in Section 9196 R. S. Missouri, 1939, which reads as follows:

"It shall be the duty of the sheriff and jailer to receive, from constables and other officers, all persons who shall be apprehended by such constable or other officers, for offenses against this state, or who shall be committed to such jail by any competent authority; and if any sheriff or jailer shall refuse to receive any such person or persons, he shall be adjudged guilty of a misdemeanor, and on conviction shall be fined in the discretion of the court."

Deputy jailers may be appointed by the sheriff as provided in Section 9211 R. S. Missouri, 1939, which reads as follows:

"Such deputy shall be appointed by the sheriffs, and shall be under their sole direction, and be removable by them at pleasure."

Since the sheriff of Carroll County is not on a salary, but is on a fee basis, he receives his fees as set out in Sections 13411, 13413 and 13414 R. S. Missouri, 1939.

Section 13415 R. S. Missouri, 1939, reads as follows:

"No sheriff or ministerial officer in any criminal proceeding shall be allowed any fee or fees for any other services than those in the two preceding sections enumerated, or for guards not actually employed."

Section 13416 R. S. Missouri, 1939, reads as follows:

"Hereafter sheriffs, marshals and other officers shall be allowed for furnishing each prisoner with board, for each day, such sum, not exceeding seventy-five cents, as may be fixed by the county court of each county and by the municipal assembly of any city not in a county in this state: Provided, that no sheriff shall contract for the furnishing of such board for a price less than that fixed by the county court."

After a careful search, we find no provision for the payment of a jailer by the county court, and the only way that a jailer could be paid by a sheriff would be out of the fees collected by him as sheriff.

It was held in the case of *Moutier v. Stumpe*, 39 Mo. App. 161, that a jailer was not merely an employee of the sheriff, but held an independent official position. Where a jailer is an official, he must point to the statute which allows him compensation in any manner. Since the legislature did not enact a law creating a salary for a jailer, in counties such as Carroll County, then he must obtain his compensation from the fees allowed him for certain duties performed, such as providing prisoners with food.

In the case of *Moutier v. Stumpe*, supra, the court at 1. c. 164, said:

"Section 6078 reads as follows:

'Whenever any person, committed to jail upon any criminal process, under any law of this state, shall declare, on oath, that he is unable to buy or procure necessary food, the sheriff or jailor shall provide such prisoner with food, for which he shall be allowed a reasonable compensation to be fixed by law.'

"Other provisions of the statute make it the duty of the sheriff or keeper of the jail to receive prisoners from other counties where there are no jails, and to produce them before the circuit courts of the counties appointed for the trial of such prisoners; and in case of a failure or refusal to discharge the duties thus imposed the sheriff or keeper of the jail shall be deemed guilty of contempt and be punished by fine and imprisonment in the county jail, etc. And in this connection, section 6094 provides 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.'

"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 inde-

pendent 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."

In the above quotation, it is very noticeable that in each of the sections therein set out it provided " * * * he shall be allowed a reasonable compensation to be fixed by law, * * * ", etc.

All county officers must be able to point out the statute which allows them fees or salary. It was so held in the case of Nodaway County v. Kidder, 129 S. W. (2d) 857, 1. c. 860, where the court said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is

provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. State ex rel. Evans v. Gordon, 245 Mo. 12, 28, 149 S. W. 638; King v. Riverland Levee Dist., 218 Mo. App. 490, 493, 279 S. W. 195; State ex rel. Wedeking v. McCracken, 60 Mo. App. 650, 656,

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Buder v. Hackmann, 305 Mo. 342, 265 S. W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S. W. 655; Williams v. Chariton County, 85 Mo. 645."

CONCLUSION

It is, therefore, the opinion of this department, that the sheriff of Carroll County is not authorized to employ a jailer at the expense of the county, and the county is not authorized to pay a jailer a certain salary.

APPROVED:

Respectfully submitted

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