SHERIFF:

Sheriff is entitled to payment for board of prisoners fixed by his local county court where he has charge of prisoners coming from another county that has no jail.

February 21, 1938

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Mr. G. Logan Marr,
Prosecuting Attorney
Morgan County,
Versailles, Missouri.

Dear Sir:

This will acknowledge receipt of your request dated February 14, 1938, for an opinion from this office which request reads as follows:

> "Morgan County does not have a suitable jail, and prisoners are sent to Cooper County jail by virtue of section 8545.
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> The Circuit Court has entered an order of record, designating the Cooper County jail as the regular Morgan County jail.
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> In November 1937, the County Court of Morgan County, Mo. under section 11794, made an order fixing the board of prisoners in jail at 60¢ per day per man.
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> The County Court of Cooper County, Mo., has fixed the board of prisoners in Cooper County at 70¢ per day per man.
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> The sheriff of Morgan County, Mo., takes all his county and state prisoners to the Cooper County jail, and the jailor of Cooper county will not feed the prisoners from Morgan County at the rate of 60¢ per day per man, and then feed his own prisoners at 70¢ per day per man. From section 8545, the Cooper County jailor must take in the Morgan County prisoners brought over by the sheriff of Morgan County.
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> Does the County Court of Morgan County, Mo., have to pay the Cooper County rate

of $70¢ per day per man, or does the 60¢ per day per man prevail, and that is all the court can pay the jailor of Cooper county?

If the county court of Morgan County, Mo. is bound by the 70¢ per day per man in Cooper county, can the county court of Morgan County, Mo. change their order of $0.60¢ per day to 70¢ per day per man?"

Section 8527 R.S. Mo. 1929 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."

Section 8533 R.S. Mo. 1929 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 jailer shall provide such prisoner with food, for which he shall be allowed a reasonable compensation, to be fixed by law; and if, from the inclemency of the season, the sickness of the prisoner or other cause, the sheriff shall be of the opinion that fuel, additional clothes or bedding, medicine and medical attention are necessary for such prisoner, he shall furnish the same, for which he shall be allowed a reasonable compensation."

Section 8545 R.S. Mo. 1929 reads as follows:

"It shall be lawful for the sheriff of any county of this state, when there shall appear to be no jail, or where

> the jail of such county shall be insufficient, to commit any person or persons in his custody, either on civil or criminal process, to the nearest jail of some other county; and it is hereby made the duty of the sheriff or keeper of the jail of said county to receive such person or persons, so committed as aforesaid, and him, her or them safely keep, subject to the order or orders of the judge of the court for the county from whence said prisoner was brought."

Section 11794 R.S. Mo. 1929 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."

This section as you will notice, provides that no sheriff shall contract for the furnishing of such board for a price less than that fixed by the county court. The term "county court" means the county court where the prisoner is furnished with board. According to your request, the county court of Cooper County, Missouri, has fixed the board of prisoners in Cooper County at seventy cents per day per man and if the sheriff of Cooper County should charge a less amount than seventy cents per day per man, he would be violating that part of Section 11794 R.S. Mo. 1929, which forbids him accepting a price less than fixed by his own local county court.

Section 11795 R.S. Mo. 1929 reads as follows:

> "It shall be the duty of the county courts of each county in this state at the November term thereof in each year to make an order of record fixing the fee for furnishing each prisoner with board for each day for one year commencing on the first day of

> January next thereafter, and it shall be the duty of the clerk of the county court to certify to the clerk of the circuit court of such county a copy of such order, and the same shall be filed in the office of the clerk of the circuirt court for the use of the said clerk and the judge and prosecuting attorney in making and certifying fee bills."

According to this section, it shall be the duty of the clerk of the county court to certify to the clerk of the circuit court of such county a copy of such order, and the same shall be filed in the office of the clerk of the circuit court for the use of said clerk and the judge and prosecuting attorney in making and certifying fee bills. According to this part of Section 11795, it all goes on the theory that the allowance must be fixed by the local county court and certified by the local officers authorized thereby.

In the case of State ex rel. Saline County v. Price, 246 S.W. 572, the court held:

> "The trial court held that sums received by the sheriff from the county for the board of prisoners in his charge as jailer were not fees for which the plaintiff can be held to account, as a part of his compensation allowed by the statute. Section 11036, R.S. 1919. Section 12551, R.S. 1919, provides that--
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> 'The sheriff * * * 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.'
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> In this capacity it became his duty to see that the prisoners confined there were provided with food, bedding, and medical attention. Section 11003 makes it the duty of the county court at the November term of each year to fix the fee for furnishing each prisoner with board for each day during the following calendar year. During the entire term of the defendant Price, the amount of this daily charge

> was limited to 50 cents, and the sheriff or jailer was forbidden to make any contract for the boarding of prisoners for a less sum. * * *."

Section 11795 R.S. Mo. 1929, is identical with Section 11003 R.S. Mo. 1919 mentioned in the opinion of this case.

The legislature, in authorizing the county court to fix the sum to be charged for the board of prisoners, could not delegate the authority to the county court of Morgan County, Missouri, to fix the board of prisoners confined in the jail of Cooper County, Missouri.

In the case of State ex rel. Buckner v. McElroy, 309 Mo. 595, the legislature of this state attempted to pass an act which would place the control of several of the county buildings under the parole board which consisted of circuit judges of Jackson County, Missouri. This act was in direct violation and unconstitutional and was so held by the court. It was unconstitutional for the reason that it violated Section 36 of Article VI of the Missouri State Constitution which reads as follows:

> "In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

The court in this case also held as follows:

> "The gist of this case hovers around Section 36 of Article VI of the Missouri Constitution for 1875. This section reads: 'In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact <u>all</u> county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law.' By law these courts have been established so as to consist of a presiding judge (to be elected by the whole county) and two associate or district judges to be

chosen by the electorate of their respective districts. But what we want to emphasize is the fact that the court is of constitutional origin, and its jurisdiction fixed by the Constitution. In the language of the organic law such court 'shall have jurisdiction to transact all county * * * * business.' Other business may be added to its jurisdiction by law, but no law can take from it that which the Constitution expressly gives, i.e., that it shall transact all county business. By Section 2574, Revised Statutes 1919, such court is given control of all county property, both real and personal, and with it the added authority to purchase, lease and receive by donation any property, real or personal, for the county. Likewise we find the power to sell property belonging to the county, and to audit and settle all demands against the county. Much of this section has stood for many years, and is and was a legislative construction of the Constitution when it speaks of transacting county business. The law-makers understood that the transacting of county business meant the control of all county property, whether such property was in the nature of either penal or eleemosynary institutions. The law-makers would have just as much power to place the county jail, or the poor farm under the control of a parole board, as they would have to place the three institutions mentioned in the pleadings herein. Or, to broaden the field, the divers state eleemosynary and penal institutions of the State could as well be placed in a board of supreme or circuit judges. The management of county and state property, having no direct connection with the work of the judges, should not be placed in the hands of the judges. It has been ruled that courts can appoint agents and officers connected with the court and look after the property wherein the courts are held, and many things incidental to the workings of courts, but such is not

> the case here. For that reason we do not discuss or pass upon such matters. Here the power is conferred, by the Constitution, upon the County Court of Jackson County to manage and control these institutions and no mere legislative act can thwart the Constitution. * * * * * * * * * * * * * * *."

Section 8545 R.S. Mo. 1929 as set out above, does not mention anything about the sum or price to be charged for the board of a prisoner in the county to which the prisoner has been sent. In the case of Ransom v. Gentry County, 48 Mo. 341, l.c. 343, the court held:

> "The language of the statute also refers to the county where the prisoner is held in custody. The expense can only be incurred with the sanction of the judge of the court having criminal jurisdiction for his (the sheriff's) county, or any two justices of the county court of his county, and must be audited and paid as other county expenses.
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> This case was a case where a prisoner was indicted on a felony in one county and was removed by change of venue to another, not provided with a sufficient jail, the former county was held not liable for the guarding of the prisoner in the latter, when the cost arose from a failure of the county to provide such jail. The county failing to provide the jail was held to bear the expenses.

Statutes must be construed in their exact terms. In the case of State ex rel. v. Cobb, 55 S.W. (2d) 57, the court held:

> "The rule is well stated, as follows:
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> 'A statute is not to be read as if open to construction as a matter of course. It is only in the case of ambiguous statutes of uncertain meaning that the rules of construction can have any application. Where the language of a statute is plain and unambiguous and its meaning clear and

unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.' * * * *."

The court in the same case further held:

"* * * * In Lewis-Sutherland Stat. Const. vol. 2 (2d Ed.) p. 737, it is said:

'Where the omission is not plainly indicated and the statute as written is not incongruous or unintelligible and leads to no absurd results, the court is not justified in making an interpolation.' * * * * * * * * * *."

59 Corpus Juris at page 961, sets out the following:

"In construing a statute to give effect to the intent or purpose of the legislature, the object of the statute must be kept in mind, and such construction placed upon it as will, if possible, effect its purpose, and render it valid, even though it be somewhat indefinite. To this end it should be given a reasonable or liberal construction; and if susceptible of more than one construction, it must be given that which will best effect its purpose rather than one which would defeat it, even though such construction is not within the strict literal interpretation of the statute, and even though both are equally reasonable. Where there is no valid reason for one of two constructions, the one for which there is no reason should not be adopted. The legislature cannot be held to have intended something beyond its authority in order to qualify the language it has used," citing Betz. v. Columbia Telephone Co., (App.) 24 S.W. (2d) 224.

In the case of Fischbach Brewing Company v. City of St. Louis et al., 95 S.W. (2d) 335, the court held:

> "In determining the meaning and intent of a statute it is proper to consider the time of its enactment, the surrounding facts and circumstances, the purpose for which the law was enacted, the cause or necessity which induced its enactment, the prior condition of the law, the mischief sought to be remedied, contemporaneous and prior historical events which may have influenced the enactment; in other words, the judicial interpreters of the law should put themselves as near in the position of the makers of the law as possible in order to more correctly ascertain their intent in its enactment. Sutherland on Statutory Construction (2d Ed.) 456, p. 864, 471, p. 883."

It has been held that when a county court had made a valid order in reference to the board of prisoners, it has exhausted its power and cannot change that order. In the case of Mead v. Jasper County, 266 S.W. 467, the court held:

> "* * * * The county court, having made a valid order which was within its power and duty to make at the November term and before January 1st, exhausted its power in respect thereto for that year and could not set same aside after January 1st, particularly if rights became fixed thereby for the ensuing year. In Bayliss v. Gibbs, 251 Mo. loc. cit. 506, 158 S.W. 594, it was said:
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> 'This court, in numerous cases, has repeatedly held, that the county courts of the respective counties of the state are not the general agents of the counties of the state. They are courts of limited jurisdictions, with powers well defined and limited by the laws of the state; and as has been well said, the statutes of the state constitute their warrant of authority, and when they act outside of and beyond their statutory

authority, their acts are null and void.'

In Saline County v. Wilson, 61 Mo. loc. cit. 239, it was said:

'County courts are only agents of their respective counties in the manner and to the extent prescribed by law. So long as they continue to tread in the narrow pathway allotted to their feet by legal enactment, their acts are valid, but whenever they step beyond, their acts are void.'

The general rule is laid down in 15 Corpus Juris, p. 470, where it is said:

'Where a county board or court exercises functions which are administrative or ministerial in their nature and which pertain to the ordinary county business, and the exercise of such functions is not restricted as to time and manner, it may modify or repeal its action; but in no event has such court or board the power to set aside or to modify a judicial decision or order made by it after rights have lawfully been acquired thereunder, unless authorized so to do by express statutory provision. * * * The same is the case after an appeal has been allowed, or where some special statutory power is exercised, the time and mode of the exercise thereof being prescribed by statute. Where the previous action of the board is in the nature of a contract which has been accepted by the other party, or on the faith of which the latter has acted, it cannot be rescinded by the board without the consent of the other party. Conversely, where the proposition has not been accepted or acted on by the other party, the board may restrict or rescind its action. In the absence of express statutory authority, a county board cannot review or reverse the act of a prior board performed within the scope of authority conferred by law. A county board or court may, however,

at the term or session at which an order is made, revise or rescind it, provided this is done before any rights accrue thereunder, but ordinarily they have no power to do such act subsequent to such term or session.'

Section 11002 contemplates that the sheriff himself will furnish the board for the prisoners under his care in the county jail. But the proviso that he shall not contract for the furnishing of such board for a price less than that fixed by the county court recognizes the fact that he may lawfully contract with others to furnish such board, the only limitation thereon being that he shall not be permitted to profit thereby. Sections 11002 and 11003 require provision to be made for the future, to wit, the ensuing year, and common fairness requires that the county court should not be permitted, through mere caprice or even while acting under entirely proper motives, to change its order to the detriment of the sheriff. Certainly, if respondent had elected to contract with a third person for the board of prisoners for the ensuing year on the price fixed in the order of December 1, 1922, it would constitute a grievous wrong to permit the county court to change its order. * * * * * *."

CONCLUSION

In view of the above cited authorities, it is the opinion of this office that the County Court of Morgan County, Missouri, must pay the sheriff of Cooper County, the rate of seventy cents per day per man as fixed by the County Court of Cooper County.

It is also the opinion of this office that the County Court of Morgan County cannot change their order fixing the board of prisoners in Morgan County at sixty cents per day until the November term of court of this year for the following year beginning January 1, 1939. The County Court of Morgan County is indebted to the sheriff of Cooper County in

the amount of seventy cents per day per man and can be paid in the same manner as debts created by the County Court of Morgan County.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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