COUNTY COURT: The County court may place the county jail in the basement of the courthouse.

December 16, 1938

P-19

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57

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

Dear Sir:

We have received your letter of December 10, 1938, which reads as follows:

> "Morgan County, Missouri, is the only county in the state that I know of that does not have a suitable county jail for the confinement of its prisoners under sentence or awaiting trial. By the order of the Circuit Court and the use of the statutes Boonville jail is used as a regular jail for Morgan County prisoners. The jail we have is a one cell hold over, not adequate in any way.
>
> "In transporting these prisoners back and forth to Boonville, costs Morgan County in mileage paid to the sheriff, the sum of between five hundred and seven hundred dollars per year.
>
> "For instance, a prisoner on trial in Morgan County, from Cooper county on a change of venue, tried to break jail, and the sheriff of our county, kept him every night in the new county jail at Jefferson City. In transporting this prisoner back and forth to the trial, it has cost over one hundred and twenty five dollars in mileage, and the end is not in sight because the prisoner must be present in the argument of the motion for a new trial.

"About forty years ago, the present county court house was built. In the construction thereof, the jail was to be in the basement of the building. In the basement of this building there are cell blocks made out of limestone rock, and cemented up. These cells are not completed. After this court house was built, there was some kind of a statute or decision that prisoners could not be confined in jail built below the ground. For this reason the jail cells in the basement were never completed, and never used.

"This court house has sewer, water, light, and the county without much expense could finish these cell blocks in the basement of the courthouse for use as a county jail. They could be lighted by electric lights. They could be air conditioned, if necessary.

"Do you know of any law, statute or decision that would prevent Morgan County from fixing up this court house basement for a regular county jail?"

Section 8537, R. S. Mo. 1929, reads as follows:

"It is hereby made the special duty of the court having criminal jurisdiction, at each term, to inquire and see that all prisoners are humanely treated."

Section 8524, R. S. Mo. 1929, reads as follows:

"There shall be kept and maintained, in good and sufficient condition and repair, a common jail in each county within this state, to be located at the permanent seat of justice for such county."

Section 8524 specifically states that "there shall be kept and maintained, in good and sufficient condition and repair, a common jail."

In the case of Harkreader v. Vernon Co., 216 Mo. 696, l. c. 708, the court in defining "good and sufficient" stated as follows:

> "'The close air and squalid condition of a prison, "squalor carceris," were by many considered as the necessary attributes, and even men of respectable judgment have supposed, in the case of debtors, that the filth of the prison was a proper means of compelling them to do justice to their creditors.' (Witness the foul Bedford jail where the immortal Bunyan lay and dreamed his immortal dream.)
>
> "All such notions are worthless in an age allowing humanity as an essential element in punishment and abhorring cruelty per se in laying the law's heavy hand on delinquents.
>
> "It is written in the statutes that jails should be 'kept and maintained in a good and sufficient condition,' etc. (R. S. 1899, Sec. 8104), that is, 'good and sufficient' in a modern sanitary sense, having an eye to the sure results established by scientific investigation of the disease-breeding effects of filth and bad air."

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 12071, R. S. Mo. 1929, reads as follows:

> "The county court of each county shall have power, from time to time, to alter, repair or build any county buildings, which have been or may hereafter be erected, as circumstances may require, and the funds of the county may admit; and they shall, moreover, take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage."

In the case of State ex rel. v. Bollinger, 219 Mo. 204, l. c. 223, the court said:

> "Section 6736, Revised Statutes 1899, reads as follows: 'The county court of each county shall have power, from time to time, to alter, repair or build any county buildings, which have been or may hereafter be erected, as circumstances may require, and the funds of the county may admit; and they shall, moreover, take such measures as shall be necessary to preserve all buildings and property of their county from waste or damage.'
>
> "Clearly that section of the statute gives the county court of Stoddard county jurisdiction over the subject-matters complained of in the petition; and the pleadings, evidence and report of the referee filed herein disclose the fact that the county has sufficient money on hand with which to pay for the proposed improvements. That being true, then the county court of that county was acting within its jurisdiction, and prohibition will not lie. (State ex rel. v. Reynolds, 209 Mo. 161; State ex rel. v. Riley, 203 Mo. 175.)"

In the above quotation, Section 6736, R. S. 1899, is now Section 12071, R. S. Mo. 1929.

In the case of Village of Nixa v. McMullin, 198 Mo. App. 1, l. c. 5, the court said:

> "We hold the law to be that a marshal who makes a lawful arrest must use care to see that his prisoner is not oppressed and that he must not be treated inhumanely, and that, if a calaboose is in such condition--known to the officer--as to be an unfit place in which to confine a man overnight without endangering his physical condition he must not put him in there; and a failure to use such due care and accord ordinary decent treatment will be a breach of his bond to faithfully perform his duty."

The same ruling should apply to sheriffs, who would be liable on their bond for ill treatment of prisoners.

Under the County Budget Act, Session Laws of 1937, page 422, Section 2, Class 5, any surplus could be used for the repair of the jail. Said Class 5 reads as follows:

> "The county court shall next set aside a fund for the contingent and emergency expense of the county, the county court may transfer any surplus funds from classes 1, 2, 3, 4 to class 5 to be used as a contingent and emergency expenses. From this class the county court may pay contingent and incidental expenses and expense of paupers not otherwise classified. No payment shall be allowed from the funds in this class for any personal service, (whether salary, fees, wages or any other emoluments of any kind whatever) estimated for in preceding classes."

The proper method of improving a jail would be a bond election in compliance with Section 2905, R. S. Mo. 1929, when the cost of the repair or altering would be in excess of the surplus of the general revenue.

CONCLUSION

In view of the above authorities, it is the opinion of this department that no statute or decision would prevent Morgan County from fixing up the court house basement for a regular county jail providing there is a surplus in Class 5, Section 2, of the Budget Act of 1937 to meet such an emergency. The only reason why a jail can not be placed in a basement would be that the sheriff or jailer would be liable for damages on his bond for the ill treatment or inhumane treatment of the prisoners by reason of it not being a good and sufficient jail in compliance with the holding of the case of Village of Nixa v. McMullin, 198 Mo. App. 1.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
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