COUNTY COURT:

Under Section 11794 R.S. Mo. 1929 County Court is not authorized to make an order for sheriff to receive a different amount for boarding prisoners charged with felony than the amount for prisoners charged with misdemeanor.

January 7, 1938

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Honorable Forrest Smith,
State Auditor,
Jefferson City, Mo.

Dear Sir:

This will acknowledge receipt of your request of December 31, 1937 for an official opinion which reads as follows:

"We are in receipt of an official opinion rendered by your department on January 3, 1935 and one on February 12, 1935 with reference to board of prisoners, which two opinions are conflicting.

In our recent audits we have found that there are now seventeen counties in the southern part of the state making a separate charge for boarding prisoners where the same is legally taxed as charges against the state from the amount which is legally charged against the county for boarding prisoners.

That custom seems to be spreading in some of the northern counties. The same food is served to the prisoners where the state pays the charges as is served to the prisoner where the county pays the cost and this unfair discrimination is costing the state a considerable sum of money.

I am unable to see from reading Sections 11794 and 11795 R.S. Mo. 29 how the County Court can legally make an order segregating these charges.

> I would like to have an opinion from your department clarifying these two conflicting opinions."

As mentioned in your request, 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."

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 circuit court for the use of the said clerk and the judge and prosecuting attorney in making and certifying fee bills."

Both of these sections are the general law in reference to furnishing board for prisoners while confined in the county jail. There are two exceptions to this general

law which will be referred to later on in this opinion. In referring to Section 11794, there is no mention in the section which gives the county court authority to name a different sum for a prisoner who, according to law, the board of which would be charged to the state and the section does not contain any authority which would permit the county court to make a different charge or sum for the board of a prisoner charged with a misdemeanor and therefore not subject to payment by the state. This section is not ambiguous and should not be in court for a construction.

In the case of State ex rel. Cobb v. Thompson, State Auditor, 5 S.W. (2d) 57, the court held:

> "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. A standard text states the rule as follows: 'If the words (of the statute) are free from ambiguity and doubt and express plainly, clearly and distinctly the sense of the framers of the instrument, there is no occasion to resort to other means of interpretation. It is not allowable to interpret what has no need of interpretation. The statute itself furnishes the best means of its own exposition; and if the sense in which words were intended to be used can be clearly ascertained from its parts and provisions, the intention thus indicated will prevail without resorting to other means of aiding in the construction.' Lewis-Sutherland Stat. Const. vol. 2 (2d Ed.) p. 698.

> Relator is not seeking a construction of the act, but insists that we amend it by adding the words, 'and until their successors are appointed and qualified.' This we are without authority to do. That power is assigned to the legislative branch of the government. In Lewis-Sutherland Stat. Const. vol. 2 (2d Ed.) p 737, it is said:
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> '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.'
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> To the same effect, Johnson v. Barham, 99 Va. 305, 38 S.W. 136, where it is said:
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> 'It is safer in a case which admits of doubt, where the court finds itself at all involved in conjecture as to what was the legislative intent, that the particular object which may reasonably be supposed to have influenced the Legislature in the particular case should fail of consummation than that courts should too readily yield to a supposed necessity, and exercise a power so delicate, and so easily abused, as that of adding to or taking from the words of the statute.'"

Under the ruling State ex rel. Cobb, the county courts or the appellate courts cannot interpolate any other words or phrases which would allow the county court to make an order upon the county clerk which would segregate the charges for board of a state prisoner and a county prisoner in a different amount, which, of course, would not exceed seventy five cents (75¢) a day for each prisoner.

Article 3, chapter 84, Section 11840 R.S. Mo. 1929 which applies to the board of prisoners in counties containing a population of one hundred fifty thousand (150,000) to five hundred thousand (500,000) inhabitants, reads as follows:

> "Immediately after the taking effect of this article, and at the end of each year thereafter, and oftener if though proper, the county court shall fix the amount per day that may be expended by the marshal for furnishing board to the prisoners confined in the county jails, and the amount so fixed per day shall be the amount of costs taxed for that purpose against prisoners who shall be convicted, and be paid by the state for boarding those chargeable by law to the state: Provided, that such amount shall not exceed the sum of thirty cents per day. The food provided for prisoners shall be wholesome and properly prepared, and the marshal shall exercise business economy on behalf of the county, paying no more than the most reasonable rates for articles of food and the hire of the employes, and he shall, in the exercise of his trust, be under the superintending control of the county court at all times. It shall be the duty of the marshal at the end of each month to report in writing, duly verified by affidavit, to the county court, the names of all prisoners in the county jails of the county to whom he has furnished board, the number of days has been so furnished by him, and all expenses incurred for that month in providing and causing to be furnished food to such prisoners, showing name, amount and exact cost of each article of food, voucher therefor, with the name of person from whom purchased, also the name of each employe, the purpose for which he was employed, and the exact amount to be paid him for his services, without any bonus or rebate or profit from either to the marshal or any intermediary whomsoever, instigated or

> created by the marshal; and any such marshal, deputy or employe of any such marshal who shall violate any provision of this section shall upon conviction thereof, be punished by imprisonment in the penitentiary not exceeding three years, or by imprisonment in the county jail not less than six months or more than one year, or by fine not less than one hundred dollars nor exceeding one thousand dollars, or by both such fine and imprisonment. The county court shall allow and cause to be issued a warrant upon the county treasury, to the marshal, for the exact expense so incurred, in boarding such prisoners, not exceeding in aggregate the amount aforesaid per day fixed by it."

In Article 4, chapter 84, Section 11840 R.S. Mo. 1929, the same terms were set out as in Section 11840. The only difference being that in Section 11840, the maximum charge was thirty cents (30¢) per day for each prisoner. In Section 11849, which section applies to the board of prisoners in counties which at that time contained or may thereafter contain a city of seventy five thousand (75,000) inhabitants and less than two hundred thousand (200,000) inhabitants. Section 11849 was amended in the 1937 Session Acts at page 444. This amendment was only for the purpose of raising the charge for the board of prisoners from thirty cents (30¢) per day for each prisoner to forty cents (40¢) per day for each prisoner.

Section 11849 as amended in the 1937 Session Acts of Missouri and Section 11840 of the Revised Statutes of Missouri 1929, are identical in every respect except the charge per day for the board of each prisoner. In Section 11839 as amended by the 1937 Session Act, the county court has been authorized to fix the amount per day that may be expended by the sheriff for furnishing board to the prisoners confined in the county jail, and the amount so fixed per day shall be the amount of cost taxed for that purpose against prisoners who shall be convicted and be paid by the state for boarding those chargeable by law to the state. According to this part of the Section 11849, there is no question but that the state must pay the amount

fixed by the county court for the board of prisoners chargeable by law to the state providing that such amount shall not exceed the sum of forty cents (40¢) per day under Section 11849 and thirty cents (30¢) per day under Section 11840 R.S. Mo. 1929. This, of course, only applies to the special acts as set out by legislature and not the general act upon which you require an opinion. I am setting out the special acts for the reason to show that if it was the intent of the legislature that Section 11794 as above set out could be construed differently than the exact wording of the section by orders of the county court upon the county clerk in reference to pay for the board of prisoners, the legislature would have only need to have used the general law being Section 11794 R.S. Mo. 1929 to provide a different sum than that mentioned in the two special acts.

The two special acts, Section 11840 and Section 11849 R.S. Mo. 1929 as above set out go further with a proviso that even after the state is chargeable by the amount set by the county court and which is charged against the state, it then becomes the duty of the sheriff to provide for all of the prisoners and it sets out the manner in which he should pay for food and provide for necessary employees in and about the jail for the preparation of the food and also goes further that he must make a report as to the exact amount that he has paid out for supplies and other articles of food in the preparation of the board for prisoners. The two special acts then go further that the county court shall allow and cause to be issued a warrant upon the county treasury, to the sheriff, for the exact expenses he incurred in boarding such prisoners, not exceeding in aggregate the amount aforesaid per day fixed by it. The purpose of the proviso was to save money, if possible, for the board of prisoners whose expenses for board would be chargeable against the county only. There is a possibility where there is a large number confined in a jail that the sheriff may be able to furnish the board for the county prisoners at a saving, but in any event under the two special acts the state is charged with the amount fixed per day by the county court and any saving made by the sheriff would be of no benefit to the expense charged against the state.

In 59 Corpus Juris, page 952, Section 589, the rule was stated as follows:

> "(1) The intention of the legislature is to be obtained primarily from the language used in the statute. The court must impartially and without bias review the written words of the act, being aided in

> their interpretation by the canons of construction. Where the language of a statute is plain and unambiguous, there is no occasion for construction, even though other meanings could be found; and the court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature, but the statute must be given effect according to its plain and obvious meaning, and cannot be extended beyond it because of some supposed policy of the law, or because the legislature did not use proper words to express its meaning, or the court would be assuming legislative authority. Where, however, the language is of doubtful meaning, or where an adherence to the strict letter would lead to injustice, to absurdity, or to contradictory provisions, the duty devolves upon the court of ascertaining the true meaning. If the intention of the legislature cannot be discovered, it is the duty of the court to give the statute a reasonable construction, consistent with the general principles of law. Courts should not attribute to the legislature.the enactment of a statute devoid of purpose, but where the language is clear and unambiguous but at the same time incapable of reasonable meaning, that the court cannot construe the statute to give it a meaning. The court cannot attribute to the legislature an intent which is not in any way expressed in the statute."

According to this ruling, Section 11794 R.S. Mo. 1929 need no construction. In 59 Corpus Juris, page 974, Section 577, the rule was held as follows:

> "(1) While the meaning to be given a word used in a statute will be determined from the character of its use, words in common use are to be given their natural, plain, ordinary anc commonly understood meaning, in absence of any statutory or well established technical meaning unless

> it is plain from the statute that a different meaning was intended, or unless such construction would defeat the manifest intention of the legislature. The words are to be interpreted with due regard to the subject matter of the statute and its purpose, and it may be necessary, in order to give effect to the legislative intent, to extend or restrict the ordinary and usual meaning of words; but the words of a statute are not to be given a forced, strained, or subtle meaning."

It is also the general rule that interpreting a statute other sections which apply to the same manner shall be read together with the section subject to interpretation. This was so held in the case of State ex rel. Columbia National Bank of Kansas City v. Davis, Judge et al., 284, S.W. 464, l.c. 470, where the court held:

> "Statutes in pari materia are those which relate to the same person or thing, or to the same class of persons or things. In the construction of a particular statute, or in the interpretation of any of its provisions, all acts relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law."

According to the authority in State v. Davis, as above cited, and reading the special Sections 11840 and 11849 as above set out, there can only be one conclusion but that the intention of the legislature in passing Sections 11840 and 11849 was they legally gave the county court authority to make different charges for state prisoners and county prisoners for their board and by their act have legally given that authority which has illegally been assumed by county courts who do not come within the two special acts to make orders for different charges which is legally set out in the two special acts.

CONCLUSION

In conclusion will say that it is the opinion of this office that county courts in all counties except the county courts which come within the provisions of Sections 11840 and 11849 of the Laws of the State of Missouri have no authority to make an order to the sheriff allowing him a different sum for the board of a prisoner chargeable to the state which would be different from a charge for the board of a prisoner chargeable to the county and it is the conclusion of this office that the same charge must be made for the board of a county prisoner as that charged to the state for the board of a state prisoner providing the charge should not be more than the maximum amount allowed for the board of each prisoner by the county court.

In rendering this opinion, another opinion on the same subject matter has been withdrawn on this date by this office. The withdrawn opinion was dated February 12, 1935 and was given at the request of Honorable Sam M. Wear of Springfield, Missouri, and is no longer to be considered as the opinion of this office.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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