COUNTY JAILS: Necessity of receiving prisoners committed for violation of ordinances of cities of the third class.

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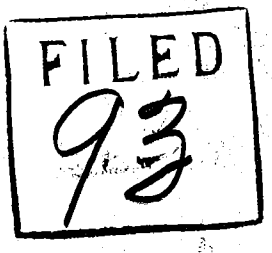

Honorable Henry C. Walker
Prosecuting Attorney
Kennett, Missouri

Dear Sir:

Reference is made to your letter dated February 15, 1946, requesting an official opinion of this office, and reading as follows:

> "Two members of the County Court have instructed me to write you and request your opinion on the following matter.
>
> "The City of Kennett places the prisoners charged with a violation of the City Ordinances in the County Jail, both upon arrest, and after trial, when the prisoners are serving their sentence. The City pays the board bill of seventy five cents per day per prisoner on the City prisoners. The City owns a City Hall, but I doubt if it would be contended that it is adequate to care for the prisoners in its present condition.
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> "The questions which I am instructed to ask your opinion on are: One. Does the City have the right to place its prisoners in the County Jail, if the County Court objects and makes an order instructing them not to do so, and instructing the Sheriff not to receive them? Two. If the City can place its prisoners in the County Jail under the circumstances outlined above and in question one, does the County Court have the power and right to charge the City rent for the use of said Jail, or require the City to pay any portion of the expenses of operating said jail, other then the board bill of said prisoners?

> "I might state that all of the Cities and Towns in this County use the County Jail, when needed, in the same way the City of Kennett does, though of course not to the same extent."

With respect to the first question you have asked, we direct your attention to Section 7360, R. S. Mo. 1939, which reads as follows:

> "If any city as in this chapter provided for have no suitable and safe place of confinement, the defendant may be committed to the common jail of the county by the mayor or police judge of such city, and it shall be the duty of the sheriff, upon the receipt of a warrant of commitment from the mayor or police judge, if he have room, to receive and safely keep such prisoner until discharged by due process of law. Such city shall pay the board of such prisoner at the same rate as may now or hereafter be allowed by law to such sheriff for the keeping of other prisoners in his custody."

We further direct your attention to the provisions of Section 9196, R. S. Mo. 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."

From the above quoted statutes, it is apparent that cities do have authority to confine persons found guilty of violating city ordinances in county jails if such cities do not have suitable or safe places of confinement for that purpose.

There may be some question in your mind as to the applicability of these sections to the confinement of persons prior to trial and conviction. Based upon the last census, we note that the City of Kennett falls within the population brackets

of a third class city. We assume that it is in that class. It thereupon becomes pertinent to determine the committing authority of the judicial officers of cities of the third class. In that regard, we direct your attention to Section 6909, R. S. Mo. 1939, reading as follows:

> "When any person shall be arrested and brought before the police judge, it shall be the duty of the police judge to hear and determine forthwith the complaint alleged against the defendant, unless for good cause the trial be postponed to a time certain, in which case he shall require the defendant to enter into recognizance, with sufficient security, conditioned that he will appear before the said police judge at the time and place appointed, then and there to answer the complaint alleged against him; and if he fail or refuse to enter into such recognizance, the defendant shall be committed to prison and held to answer such complaint as aforesaid. Defendants shall be entitled to a trial by jury as in prosecutions before justices of the peace." (Emphasis ours.)

Also, to the further provisions of Section 6916, R. S. Mo. 1939, reading as follows:

> "If the defendant plead or be found guilty, the police judge shall declare and assess the punishment prescribed by ordinance, according to his finding or the verdict of the jury, and render judgment accordingly and for costs of suit, and that the defendant stand committed until judgment is complied with." (Emphasis ours.)

From the latter two statutes quoted, it further appears that the police judge of cities of the third class has committing power in either of two instances: (1) Failure to enter into recognizance for appearance for trial and (2) in conformity with verdict of guilty and judgment of commitment after trial.

From the above, we are persuaded to the opinion that the county court has no authority to order the sheriff to refuse to receive persons charged with violation of city ordinances

pending trial or in conformity with verdict of guilty and judgment of commitment imposed in conformity thereto. You will also note that under the provisions of Section 9196, R. S. Mo. 1939, quoted above, it is made a misdemeanor for the sheriff or jailer to refuse to receive any such persons when lawfully committed.

With reference to the second question which you have asked, we believe that the concluding portion of Section 7360, R. S. Mo. 1939, quoted supra, to be the only statute relating to the charges that may lawfully be imposed upon cities for confinement of prisoners committed by them in the county jails. We are unable to find any statutes which might be thought to impose additional liability upon such cities, or under which the county court could lawfully require, as a condition precedent to confining such city prisoners in the county jail, that the city make contributions toward the maintenance and upkeep of the county jail. Lacking such statutory authority, we believe that the county court may not lawfully make such requirement.

CONCLUSION

In the premises, we are of the opinion that persons committed for failure to enter into recognizance for appearance for trial upon charges of violating ordinances of cities of the third class, or persons committed pursuant to the verdict finding them guilty of the violation of ordinances of cities of the third class and judgment of commitment in conformity therewith, must be received into county jails, provided that such cities of the third class do not have suitable and safe places for confining such prisoners, and further provided that there be room for such prisoners in the county jail.

We are further of the opinion that the county court cannot lawfully make any further charges for the keeping of such prisoners in the county jail beyond the payment by such city of the board of such prisoners at the same rate as is then being allowed by law to the sheriff for the keeping of other prisoners in his custody.

Respectfully submitted,

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General