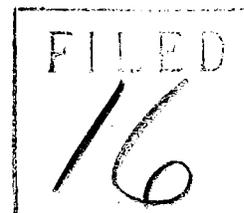


COUNTY BUDGET ACT: Sheriff's expenses for conveying inmates to the hospital should be paid out of class 5; (2) Sheriff whose term expires before date of sale under trustee deed should conduct the sale.

February 7, 1941

Mr. Paul N. Chitwood  
Prosecuting Attorney  
Reynolds County  
Centerville, Missouri



Dear Sir:

In reply to your request for an opinion of some time ago, in which you present two questions, the first portion of your letter being as follows:

"1. Section 2, page 422, Laws of Missouri for 1937 provides:

The county court shall set aside and apportion a sufficient sum to care for insane pauper patients in state hospitals. Class 1 shall be the first obligation against the county and shall have priority of payment over all other classes.

Under the authority of this section the Reynolds County Court has each year set aside not only an amount sufficient to pay the expense of each insane pauper patient in state hospitals, but also an amount sufficient to pay the expenses of the Reynolds County sheriff, in transporting such patients to such hospitals during the year. All such expenses (both for patient and the sheriff) have been paid out of class 1.

Recently my attention was called to the fact that the sheriff's expenses are not

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covered by this section of the budget law, but should be classified under class number 5. Since the incoming tax collections in this county are so small the court has failed to appropriate any funds in class number 5. By experience they have found that in view of the finances of the county, that there is hardly enough to take care of class number 4.

Section 10911 R. S. Mo. 1939, which relates to the county budget law, and which was formerly, as stated in your letter, Laws of 1937, reads as follows:

"The court shall classify proposed expenditures in the following order:

Class 1: The county court shall set aside and apportion a sufficient sum to care for insane pauper patients in state hospitals. Class 1 shall be the first obligation against the county and shall have priority of payment over all other classes."

Section 10914 R. S. Mo. 1939, also contains the following provision:

"Class 1: Care of paupers declared by lawful authority to be insane (in state hospitals)."

There is no provision, nor is the section broad

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enough in its terms to include the expenses and fees of the county sheriff. As stated in your letter, these expenses should be paid from Class 5. The only suggestion that we have to offer is to the effect that at the present time Class 5 permits the transfer of any surplus funds from any of the prior classes.

We are of the opinion that you are correct on the law regarding this question, but as to the question of finances, you cannot alleviate that condition.

## II.

Your second question reads as follows:

"Today our outgoing sheriff, whose term of office expired on December 31st, 1940, offered for sale certain real estate under a deed of trust foreclosure, at the instance of the beneficiary. Our present sheriff believes that he should have been allowed to have sold this property, as the trust deed provides for a sale by the then acting sheriff in event of foreclosure and the trustee refuses to act. The ex sheriff was willing for the present sheriff to act but the beneficiary refused to let him do so. As a matter of fact I do not believe the ex sheriff had any legal authority in the matter, but since I could not find any law directly in point, the parties suggested I write you for your opinion, which will be very much appreciated."

It would appear under the authorities that the sheriff, who had advertised the property under the deed of trust

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was entitled to consummate or carry out the sale even after the expiration of his office. Most states have statutes which are apparently designed to take care of such a situation. We are unable to locate any statute directly on this point in Missouri. However, you are respectfully referred to the decisions of Porter vs. Mariner 50 Mo. 364; Bradley vs. Smith 190 Pac. 1087 and 10 A.L.R. 1339.

Respectfully submitted

OLLIVER W. NOLEN  
Assistant Attorney General

APPROVED:

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COVELL R. HEWITT  
(Acting) Attorney General

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