

COUNTY OFFICERS: The sheriff and his deputies may not
legally receive from and be furnished
SHERIFF: DEPUTY: free transportation by a street railway
company.

March 22, 1941

Honorable Joseph A. Sherman
Prosecuting Attorney
Buchanan County
St. Joseph, Missouri

ATTENTION: Hon. John W. Mitchell
Assistant Prosecuting Attorney



Dear Sir:

This is in reply to your request for an official opinion in your recent letter, which is in the following terms:

"The question has arisen in our county as to whether or not the Street Railway Company may legally furnish free transportation on its passenger vehicles to the sheriff and his deputies.

It would appear that under Paragraph No. 3 of Section 5155 R. S. 1929, such transportation could not be furnished unless the sheriff and his deputies may properly be included within the term 'policemen' as it is used in the following part of that section: 'Nor shall anything in this chapter be construed to prevent the issuance of free or reduced transportation by any street railroad corporation to mail carriers, policemen and members of fire departments.'

Article XII, Section 24 of the Constitution of Missouri provides:

"No railroad or other transportation

company shall grant free passes or tickets, or passes or tickets at a discount, to members of the General Assembly, or members of the Board of Equalization, or any State, or county, or municipal officers; and the acceptance of such pass or ticket, by a member of the General Assembly, or any such officer, shall be a forfeiture of his office."

Section 4752 R. S. 1939 in part provides:

"No railroad or other transportation company shall grant or issue free passes or tickets, or passes or tickets at a discount, to ... any ... county ... officer."

Section 4753 R. S. 1939 in part provides:

"Any officer, agent or employee of any railroad or other transportation company who shall send or deliver any free passes or tickets, or passes or tickets at a discount, to any . . . county . . . officer, shall be deemed guilty of a misdemeanor . . ."

Section 4754 R. S. Mo. 1939 in part provides:

"Any . . . county . . . officer, who shall accept, use or travel on any free passes or tickets, or passes or tickets at a discount, mentioned in the preceding sections, shall be deemed guilty of a misdemeanor, and . . . upon conviction thereof, forfeit his office . . ."

To furnish or accept free transportation is plainly the same as to furnish or to accept a free pass.

As stated in State ex inf. McKittrick vs. Williams. (Mo. Sup.) 144 S. W. (2nd) 98, l.c. 103 (7,8), "A sheriff is indeed a 'public officer.' We hold he is a 'county officer' within the meaning of this section." The court was referring to Section 7 of Article XIV of our Constitution, applicable to county officers, and the case is authority here. Being a county officer, the sheriff may not legally receive from and be furnished free transportation by the street railway.

The deputy sheriff is not a state officer. It was so ruled in State ex rel vs. Bus 135 Mo. 325, l.c. 337, 36 S. W. 636 where the court said:

"A deputy sheriff is not, in our opinion, a state officer within the intent and meaning of said section of the constitution. In this section the officers are clearly classified by territorial jurisdiction and a sheriff falls under the class of county officers."

Neither is he a municipal officer. But he is a public officer. In State vs. Bus, supra, at l.c. 332, 333 of 135 Mo., it was ruled:

"Deputy sheriffs are appointed by the sheriff, subject to the approval of the judge of the circuit courts; they are required to take the oath of office, which is to be indorsed upon the appointment and filed in the office of the clerk of the circuit court. After appointment and qualification they 'shall possess all the powers and may perform any of the duties prescribed by law to be performed by the sheriff.' R. S.

1889, secs. 8181 and 8182.

The right, authority and duty are thus created by statute; he is invested with some portions of the sovereign functions of the government to be exercised for the benefit of the public and is, consequently, a public officer within any definition given by the courts or text writers.

It can make no difference that the appointment is made by the sheriff, or that it is in the nature of an employment, or that the compensation may be fixed by contract. The power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public. Chief Justice Marshall defines a public office to be 'a public charge or employment.' U. S. v. Maurice, 2 Brock, 96. Whether a public employment constitutes the employe a public officer depends upon the source of the powers and the character of the duties.

The constitution requires 'all officers both civil and military, under authority of this state' before entering on the duties of their office, to take and subscribe a prescribed oath.

The statute requires a deputy sheriff to take 'the oath of office' and his powers and duties are made equal to those of the sheriff himself. The deputy sheriff is certainly a public officer under the laws of this state, and his power and authority is coextensive with that of sheriff. State v. Dierberger, 90 Mo. 369."

It may be that for some purposes not here considered

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the deputy sheriff is not in every sense a county officer. But there is authority for holding him subject to the same general limitations as are other public officers. In Scott vs. Endicott 38 S. W. (2nd) 67, l.c. 68 (3), 225 Mo. App. 426, the Springfield Court of Appeals said:

"There can be no doubt that a deputy sheriff appointed by the sheriff, as provided by section 11513, R. S. Mo. 1929, is a public officer. State ex rel. Walker v. Bus, 135 Mo. 325, 36 S. W. 636, 33 L.R.A. 616. That being true, he is subject to the same general limitations as any other public officer in the matter of salary and fees."

The deputy sheriff is a public officer with power and authority coextensive with the county. He has the same powers and duties as the sheriff has (Section 13134 R. S. 1939). Having those attributes, in our opinion, the deputy sheriff has somewhat the same limitations and obligations as the sheriff, and is within the purview of the above quoted constitutional and statutory prohibitions on the furnishing and acceptance of free transportation from a street railway company.

The above cited and quoted statutes are in Chapter 31, R. S. 1939. In view of all the foregoing, it is unnecessary to decide the question regarding another chapter of the statutes, Chapter 35 R. S. 1939 (Section 5155 R. S. 1929, now Section 5611 R. S. 1939), which is asked in your said letter.

CONCLUSION

The sheriff and his deputies may not legally receive

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from and be furnished free transportation by a street railway company.

Respectfully submitted

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APPROVED:

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EH:RT