

*Copy to Mr. Smith*

SHERIFFS: Sheriff has the custody, rule, keeping and charge of the county jail. In counties of the third class, the sheriff recovers from the county court for board furnished city prisoners.

May 19, 1947



Honorable Marshall Craig  
Prosecuting Attorney  
Mississippi County  
Charleston, Missouri

Dear Sir:

This is in reply to your letter of May 9, 1947, in which you requested an opinion on certain questions relative to the feeding of prisoners in your County Jail. Said letter reads in part as follows:

"I recently wrote you concerning the authority that the County Court might have with reference to renting or leasing a portion of the County jail to the City. You sent me an opinion written on March 26, 1940 in which it was stated that the County Court had no authority to rent any portion of the rooms in the County jail to be used as a City jail by the City Marshall.

"The City of Charleston, which is the County seat of Mississippi County does not have a City jail. It would appear that the City has the right to place their prisoners in the County jail by reason of Section 7360. As you know, under the new law, the Sheriff is now required to present his actual bills for feeding the prisoners and the County Court pays those bills. This obviously raises a very difficult question where a portion of the prisoners are City prisoners all fed by the Sheriff, and all fed at the same kitchen. Taking into consideration the above Section and Sections 2480, 1347.304 (Laws of Missouri, 1945), and Section 9196, along with the above problem which we have, I would like your opinion on the

following questions:

- "1. Is it still your opinion that the conclusion reached in the Attorney General's opinion of March 26, 1940 is still the prevailing law?
- "2. Since the County Court must pay the actual board bills, the hiring of a cook, and janitor service for the jail, would they have authority to charge the City a stipulated amount, say \$1.00 per prisoner per day, said amount to be paid directly to the County, and the Sheriff present all of his bills for food to the County Court for payment? Is the Sheriff authorized to accept any amount from the City for the care and feeding of the prisoners, except perhaps \$1.00 for commitments?
- "3. Does the County Court have authority to enter into an agreement with the City that the City prisoners may be placed in the County jail, the City to pay the County \$1.00 per prisoner per day, and the County to furnish the janitor, cook, and pay the actual grocery bills?"

Although the county court has control and management of the county property, both real and personal, the custody, rule, keeping and charge of the jail is expressly given to the sheriff by Section 9195, R.S. Mo. 1939, which reads as follows:

"The sheriff of each county in this state shall have the custody, rule, keeping and charge of the jail within his county, and of all the prisoners in such jail, and may appoint a jailer under him, for whose conduct he shall be responsible; but no justice of the peace shall act as jailer, or keeper of any jail, during the time he shall act as such justice."

Therefore, it is still our conclusion, as expressed in the opinion rendered under date of March 26, 1940, to Honorable Alfred P. Moeller, that the sheriff shall have the custody, rule, keeping and charge of the county jail, and that the county court has no authority to rent any of the rooms in the county jail to be used as a city jail by the city marshal.

Section 7360, R.S. Mo. 1939, provides:

"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."

Thus it can be seen from a reading of this section that under certain circumstances it is made the duty of the sheriff to receive the city prisoners. Therefore, your two remaining questions may be stated thusly: Under the statutes, in counties of the third class, which includes Mississippi County, is it the county court or the city officials from whom the sheriff must recover for board furnished city prisoners who are in the county jail under the sheriff's custody?

50 C.J., at page 332, says: "The supervision of prisons, being a legislative function, is regulated by statutes, the provisions of which must be observed. These functions can only be performed by the officers, boards, or other authority to whom they have been intrusted by law. The rules and regulations for the government of prisons must be adopted by the appropriate authorities in the manner prescribed, and must be within the limits prescribed by law. \* \* \* \*"

Section 4 of House Bill No. 899, passed by the 63rd General Assembly, applicable to counties of the third class, provides:

"The sheriff shall have the custody and care of persons lodged in the county jail and shall furnish them with clean quarters and wholesome food. At the end of each month the sheriff shall submit to the county court a statement supported by his oath or affirmation of the actual cost incurred by him in the feeding of persons under his custody together with the names of the persons, the number of days each spent in the jail, and whether or not the expenditure is properly chargeable to the county or to the state under the law. The county court shall audit said statement and draw a warrant on the county treasury for the amount of the actual cost payable to the sheriff. The county clerk shall submit quarterly to the State Director of Revenue a statement of the cost incurred by the county in the feeding of the prisoners properly chargeable to the state and the state shall forthwith pay the same to the county treasury."

In the case of County of Douglas v. Coburn, 34 Neb. 351, the county sheriff was suing to recover compensation from the county for board furnished city prisoners. The applicable statutes were similar to our two above quoted sections to the effect that the city shall have the right to use the county jail and that the city shall be liable to the county for the cost of keeping such prisoners. The Supreme Court of Nebraska said at l.c. 354:

"In the very able and elaborate brief of the county attorney, it is contended that the city is liable to the sheriff for the board of the city prisoners, and that the county is not so liable, but he has referred to no statute that authorizes the sheriff to collect such fees from the city. The sheriff is a county officer and receives prisoners into the jail of the county as such. The county board has the general supervision of the jail in common with other property of the county, and it is the duty of such board to see that the rules prescribed by the district judges are carried out. The county is liable to the officer for the board of prisoners committed to the

county jail. He has no arrangement with the city authorities for compensation and the law fails to provide for the allowance of such claims, while it does provide that the county shall be liable. The city, therefore, is not liable directly to the sheriff, but no doubt is to the county, for the amount so expended, with interest thereon.\* \* \* \* \*

In *Nickell v. Waukesha County*, 62 Wis. 469, plaintiff, sheriff of Waukesha County, was suing said county to recover for board furnished prisoners committed to the county jail for violation of a village ordinance. At l.c. 472, the Supreme Court of Wisconsin said:

"The items of the plaintiff's account for the board of and washing for such prisoners, and for receiving and discharging such prisoners, stand on a different basis. As sheriff the plaintiff was bound to take the charge and custody of the jails of his county and the persons therein, and to keep them himself, or by his deputy or jailer; to keep a true and exact register of all prisoners committed to any jail under his charge. Subd. 1, 2, sec. 725, R. S.; Sec. 4945, R. S. He was entitled to receive pay for his actual and necessary disbursements for board and conveyance of such prisoners, and for committing them to and discharging them from prison. Subd. 27-29, sec. 731, R. S. The statutes made the county liable for 'the expense for maintaining persons charged with offenses, and duly committed for trial, and of those who are confined in the county jail, or who may be committed for the nonpayment of any fines and expenses for safe-keeping.' Sec. 4947, R.S.; Bell v. Fond du Lac Co. 53 Wis. 433.

"It is true, the section of the charter giving to the village authority to enact the ordinance in question, also, for the purpose of imprisoning offenders thereunder, gave to the village the use of the jail of Waukesha county, and provided that 'all persons committed to said jail by the marshal or any other officer shall be under the charge of the sheriff of said county, and said village shall be liable for the expenses of

keeping such persons in said jail.' Sec. 18, ch. 30, P. & L. Laws of 1859. Under this provision there would seem to be no doubt but what if the county pays the plaintiff for such expenses, it would have a right of action over against the village for the amount so paid therefor. But this does not take away the primary liability of the county to the plaintiff for such expenses, nor compel him to separate the items of such expense for the other items of his bill. We must therefore hold that the county is liable to the plaintiff for the amount of such items of his account included in the judgment as were for the board of and washing for such prisoners, and for receiving and discharging such prisoners; and for such amount, with interest thereon from the time it should have been allowed by the county board, he is entitled to judgment against the county."

In the Waukesha County case, supra, the provisions of the statutes to which the court referred were very similar to those above quoted provisions of Section 4, House Bill No. 899, and Section 7360 R.S. Mo. 1939, and Section 9196, R.S. Mo. 1939, which says:

"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; \* \* \* \* \*"

Applying the wording of the court to the facts of our case, we find that the sheriff is bound to take the charge and custody of the jail of his county and the persons therein, and to keep them himself or by his deputy or jailer; and keep a true and exact register of all prisoners committed to the jail under his charge. By Section 4, House Bill No. 899, supra, the sheriff is entitled to recover from the county court the actual and necessary costs incurred by him in the feeding

of persons under his custody. The said section provides that the sheriff at the end of each month is to submit to the county court a statement of the actual cost incurred by him in the feeding of persons under his custody. The section then provides for an indication by the sheriff in this statement of whether the expenditure is properly chargeable to the county or to the state. The county pays for all of the expenditure, including that incurred on behalf of state prisoners, and then recovers from the state in its own behalf the cost incurred from feeding said state prisoners. It is our opinion that the same procedure would be followed in counties of the third class in the recovery of costs incurred in the feeding of city prisoners, and that the county recovers in its own behalf from the proper city officials. As provided in Section 7360, supra, the amount to be recovered would be at the same rate as is allowed by law to the sheriff for the keeping of other prisoners in his custody.

CONCLUSION

It is, therefore, the opinion of this department that the sheriff shall have the custody, rule, keeping and charge of the county jail, by virtue of which he has the control of the feeding and care of the prisoners intrusted to him. It is further the opinion of this department that in counties of the third class the county court is liable to the sheriff for the actual cost incurred by him in the feeding of persons under his custody in the jail, and it is to the county court that the sheriff is to look for the payment of actual costs incurred by him in the feeding of city prisoners confined in the county jail.

Respectfully submitted,

Wm. C. COCKRILL  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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