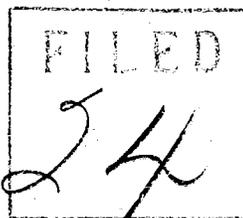


1 -SHERIFF'S: Counties liable for Sheriff's costs in returning paroled inmates to State Hospitals.

2 -CITIES; Cases appealed from Police Court of Cities of 4th Class do not become criminal cases.

December 18, 1947



12/31

*copy to
J. Small*

Mr. William Lee Dodd
Prosecuting Attorney
Ripley County
Doniphan, Missouri

Dear Mr. Dodd:

This will acknowledge receipt of your letter of December 6, 1947, in which you request the opinion of this Department. This letter contains requests for opinions on two different subjects and we will attempt to answer such requests in the order set out in your letter.

Your letter requesting these opinions after omitting caption and signatures, was as follows:

"A person was judged insane by the Probate Court and the sheriff took her to Farmington to Hospital No. 4. She remained there for a period and then was released on parole to her sister. About 6 days later she became violent and the Supt. ordered the sheriff to bring her back. The patient's sister is unable to pay mileage to the sheriff, but the sheriff wants to know from what source he is to receive his pay."

"P.S. When an appeal is taken from city police court in 4th class cities to Circuit Court does this become a criminal case to the effect that the sheriff must turn his fees over to the County?"

The first question to be answered by this Department is contained in the body of your letter set out

above, and deals with the transportation of insane persons from the County in which they live to the State Institutions.

The authority of the Probate Courts of the several Counties to send insane poor of their respective Counties to the State Hospitals is contained in Section 9328 of the Revised Statutes of Missouri for 1939 as reenacted in 1945. This section became effective July 1st, 1946, and provides as follows:

"The probate courts of the several counties shall have power to send to a state hospital such of the insane poor of their respective counties as may be entitled to admission thereto. Such probate court shall furnish the county court with a certified copy of the order finding the person to be an insane poor person and the order committing such person. The counties from which such insane poor person has been sent shall pay semi-annually in cash, in advance, such sums for the support and maintenance of their insane poor, as the board of managers may deem necessary, not exceeding six dollars (\$6.00) per month for each patient; and in addition thereto the actual cost of their clothing and the expense of removal to and from the hospital, and if they shall die therein, for burial expenses; and in case such insane poor shall die or be removed from the hospital before the expiration of six months, it shall be the duty of the managers of such hospital to refund, or cause to be refunded, the amount that may be remaining in the treasury of such hospital due to the county entitled to the same; and for the purpose of raising the sum of money so provided for, the several county courts shall be and they are hereby expressly authorized and empowered to discount and sell their warrants, issued in such behalf, whenever it becomes necessary to raise said moneys so provided for."

In Section 9321 of the Revised Statutes of Missouri for 1939 as reenacted in 1945, and which became effective July 1st, 1946, the authority is given to the Superintendent of the Hospitals and his staff to discharge or parole insane persons committed to the State's several institutions. This Section of the Statute is in part, as follows:

"Persons afflicted with any form of insanity shall be admitted into the hospitals for the care and treatment of same. Any patient so admitted may be discharged or paroled whenever in the judgment of the Superintendent and his staff such person should be discharged or paroled."

Under the provisions of the preceding two sections of the Statute, it can be seen that the Probate Court of the various counties have the power to send insane persons to the State Institutions and that after arriving there the Superintendent of each institution and his staff have the authority to discharge or parole any patients. The question to be answered here is where a patient has been paroled by the Superintendent and his staff of a state hospital, if such patient then suffers a relapse and again becomes insane and unmanageable, who shall pay the cost of his transportation back to the Institution.

Under the provision of Section 9328, Supra, it is very clear that the County would be liable for the Sheriff's costs accruing as a result of the transportation of indigent insane from the latter's home to the State Institutions and we feel that under the wording of this Section of the statute, that the County would be liable for the Sheriff's cost if he is ordered to return a paroled patient to the Institution. It will be noted that the Section provides as follows:

"The Counties from which such insane poor person has been sent shall pay * * * the actual cost of their clothing,

and the expense of removal to and from
the Hospital * * * ."

There is no specific provision of the statute referring to the payment of the Sheriff's costs which accrue as a result of the transportation of paroled inmates when being returned to the Hospital. However, in the absence of such provision, it is the opinion of this Department that the above section governs and that the Counties will be liable for the sheriff's costs in transporting a patient to a State Hospital after a revocation of his or her parole.

CONCLUSION.

It is, therefore, the opinion of this Department that the Counties are liable for the costs of the Sheriff in returning insane persons to State Hospitals after such persons have previously been paroled.

* * * * *

The second question which you wish answered is whether a case becomes a criminal case after an appeal has been taken from the City Police Court in 4th Class Cities to the Circuit Court and whether the Sheriff must turn his fees over to the County wherein the City is located.

It is well settled in this State that an appeal from a conviction in a Police Court of a city of the 4th class does not convert the case into a criminal prosecution, but such case remains a civil action. This principle of law has been cited recently in the well considered cases of: City of Clayton vs. Nemours, 164 S.W. (2d) 935, 237 Mo. App. 167, City of St. Louis vs. Fitch, 193 S.W. (2d) 828, 352 Mo. 706.

Under the provisions of the above cases an appeal from the Police Court of 4th class cities does not, when sent to the Circuit Courts of the various Counties, become a criminal action, and, therefore, the fees of

Mr. William Lee Dodd -5-

the sheriff will be governed by the appeals of the law governing civil actions and not by the Statute which provides that the sheriff must pay all of his fees to the County.

CONCLUSION.

Therefore, it is the opinion of this Department that an appeal of a case from the Police Court in a City of the 4th Class to the Circuit Court does not become a criminal action and thus does not require the Sheriff to pay his costs therein to the County.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General