

SHERIFF:  
COUNTY COURT:

Sheriff of Greene County, Missouri, not entitled to be reimbursed by the County for attorney fees in the defense of his action in the performance of official duties.

May 21, 1947

OPINION NO. 93

Honorable Wayne T. Walker  
Prosecuting Attorney  
Greene County  
Springfield, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion, which reads:

"At the request of our County Court we desire to have your opinion as to whether or not the County Court has the power to order the payment of an attorney's fee for the sheriff of the county under the following conditions.

"During the absence of the sheriff himself from the county, a prisoner was lodged in the Greene County jail by the highway patrol officers. This prisoner was held for the authorities in the City of Kansas City. He was later taken by the highway patrol officers to that city where he was charged with a felony. A few days later, the prisoner filed suit against the Sheriff of Greene County, the highway patrolmen and the Sheriff of Jackson County. The suit was filed in Jackson County, Missouri and the sheriff was compelled to employ an attorney in that city to defend the suit. The Court sustained a demurrer to the prisoner's petition and of course the law suit was dismissed by the Court. The Sheriff incurred an attorney's fee of One Hundred Fifty (\$150) Dollars which he feels should be paid for by the County. The nature of the suit was for unlawful imprisonment.

"We should be very glad to have your opinion as to whether or not the County Court has authority to pay the attorney fee under the aforesaid circumstances."

It is well established in this state that county courts are not general agents of the county, but are courts of limited jurisdiction, and outside of the management of fiscal affairs of the county, they possess only such authority as may be prescribed by statute. In Lancaster v. County of Atchison, 180 S.W. (2d) 706, 1.c. 708, 352 Mo. 1039, the court said:

"The county courts are not the general agents of the counties or of the state. Their powers are limited and defined by law. These statutes constitute their warrant of attorney. Whenever they step outside of and beyond this statutory authority their acts are void.' Sturgeon v. Hampton, 88 Mo. 203, loc. cit. 213. Quoted with approval in the case of Morris et al. v. Karr et al., 342 Mo. 179, 114 SW. 2d 962, loc. cit. 964."

See also State ex rel. Chadwick Consolidated School District v. Jackson, 84 S.W.(2d) 988, 229 Mo. App. 842, and State ex rel. Moser v. Montgomery, 186 S.W. (2d) 553.

Also, the courts in this state have unanimously held that public officers are only entitled to such fees and compensation for performing official duties as may be provided by statute. In Nodaway County v. Kidder, 129 S.W. (2d) 857, 1.c. 860, 344 Mo. 795, the court, in so holding, said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. \* \* \* \* \*

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment. State ex rel. Euder v. Hackmann, 305 Mo. 342, 265 S.W. 532, 534; State ex rel. Linn County v. Adams, 172 Mo. 1, 7, 72 S.W. 655; Williams v. Chariton County, 85 Mo. 645."

Also, see Ward v. Christian County, 111 S.W. (2d) 182, 341 No. 1115.

Furthermore, there is a specific constitutional inhibition against county courts appropriating public funds to any individual or for private purposes. Section 23, Article VI, Constitution of Missouri, 1945, reads:

"No county, city or other political corporation or subdivision of the state shall own or subscribe for stock in any corporation or association, or lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual, except as provided in this Constitution."

Section 25, Article VI, Constitution of Missouri, 1945, reads:

"No county, city or other political corporation or subdivision of the state shall be authorized to lend its credit or grant public money or property to any private individual, association or corporation, except that the general assembly may authorize any municipality to provide for the pensioning of the salaried members of its organized police force or fire department and the widows and minor children of the deceased members, and may authorize any city of more than 100,000 inhabitants to provide for the pensioning of other employees, and may also authorize payments from any public funds into a fund or funds for paying benefits upon retirement, disability or death to persons employed and paid out of any public fund for educational services, and to their beneficiaries or estates."

In 57 C.J., page 1127, Section 1191, we find the general principle that a sheriff is not as a matter of right, entitled to be reimbursed for legal services. Said provision reads in part:

"As a general rule a sheriff is not entitled, as a matter of right, to an allowance of attorney's fees incurred or paid by him for

legal advice or services in connection  
with the discharge of his functions;  
\* \* \* \* \*

We have been unable to find any statutory authority for the Sheriff of Greene County, Missouri, hiring an attorney to defend him under the facts and circumstances related in your request or for the County Court ordering such expenditure be paid by the County.

CONCLUSION

Therefore, it is the opinion of this department, in view of the foregoing authorities, and finding no statute allowing the Sheriff of Greene County, Missouri, attorney fees for defending him for his action in the performance of his official duties, he is not entitled to be reimbursed by the County Court for such services.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

ARR:LR:BJ