

OFFICERS:  
SALARIES AND FEES:

Prior to enactment of Section 57.430, RSMo 1949, a county court had no statutory authority to pay mileage for travel of a sheriff going beyond boundary of state to return juvenile delinquent to this state. Since enactment of above section, sheriff is allowed maximum of \$75.00 in calendar month for performance of official duties in connection with the investigation of persons accused or convicted of a criminal offense.

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April 15, 1952

Honorable W. H. Holmes  
State Auditor  
State of Missouri  
Jefferson City, Missouri

4-15-52

Dear Sir:

This office is in receipt of your request for an official opinion, as follows:

"A juvenile, fifteen years of age, was charged with delinquency in the magistrate court of St. Francois County and after the hearing was paroled. While on parole he was staying with a friend near Iron Mountain, Missouri, and stole the friend's pocket book containing \$90.00 and left for Detroit, Michigan. He got into some trouble in Michigan and the authorities there, notified the prosecuting attorney of St. Francois County, that they were holding him for the authorities of said county. The authorities of St. Francois County tried to get the juvenile's parents to go get him but they were not interested. The party from whom he stole the pocket book and \$90.00 insisted that he be returned to St. Francois County to answer to the crime committed. The sheriff took the matter up with the county court and the court ordered the sheriff to go to Michigan and return the juvenile and they would pay his expenses, which he did. The expense incurred amounted to \$151.00, which the court paid.

"The question is:

Honorable W. H. Holmes

"Did the county court have statutory authority to pay the \$151.00 to the sheriff?"

One of the essential elements of the question which you ask would appear to be whether or not the county court is vested with authority to make such payment as described in your above request.

Concerning the power of the county court, in the case of Lancaster v. County of Atchison, 180 S.W. (2d) 706, l.c. 708, 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. \* \* \*"

Section 7 of Article VI of the Constitution of Missouri, 1945, provides for the management of county business as follows:

"County courts--number of members--powers and duties.--In each county not framing and adopting its own charter or adopting an alternative form of county government, there shall be elected a county court of three members which shall manage all county business as prescribed by law, and keep an accurate record of its proceedings. The voters of any county may reduce the number of members to one or two as provided by law."

In Section 49.270, RSMo 1949, it is provided as follows:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

Honorable W. H. Holmes

We would conclude from the above that the county court does not possess any powers except those which are conferred by statute. This is brought out in the case of Jensen v. Wilson Township, Gentry County, 145 S.W. (2d) 372, l.c. 374, in which the Court stated:

"\* \* \* A county court is only the agent of the county with no powers except those granted and limited by law, and like all other agents, it must pursue its authority and act within the scope of its powers. State ex rel. Quincy, etc., Ry. Co. v. Harris, 96 Mo. 29, 8 S.W. 794. \* \* \*"

We have found no statute authorizing the county court to pay the expenses of the sheriff for going without the state to bring back a prisoner. In regard to the statutory authorization to the sheriff, Section 57.390, RSMo 1949, provides for the salary of sheriffs in class three counties. That section is lengthy and we believe it will be sufficient to say that it does not provide for expenses.

There is a provision for the expense in Section 57.430, RSMo 1949. That section provides as follows:

"In addition to the salary provided in sections 57.390 and 57.400, the county court shall allow the sheriffs and their deputies, payable at the end of each month out of the county treasury, actual and necessary expenses for each mile traveled in serving warrants or any other criminal process not to exceed five cents per mile."

(Underlining, ours.)

This section provides for the expenses in the serving of criminal processes. We know of no effective criminal process for the sheriff to serve outside of the State of Missouri that can be issued by our state courts in criminal matters. The facts set forth in the request letter entail none.

House Bill No. 100 of the 66th General Assembly became effective October 9, 1951. It increased the mileage allowance to seven cents per mile. However, this statute, although being amendatory to the above Section 57.430, limits the maximum amount allowed to be \$75.00 during any one calendar

Honorable W. H. Holmes

month in the performance of official duties in connection with the investigation of persons accused of or convicted of a criminal offense. It does, however, now include these words: "In connection with the investigation of persons accused of or convicted of a criminal offense."

We find no provision in this new law which limits the distance to be traveled by either county or state boundaries. There is a limitation on the amount to be expended in any one calendar month. That is \$75.00. From the text of the statute the \$75.00 must include all of the expenses in connection with such investigations for one calendar month.

House Bill No. 100, referred to above, provides for the method the sheriff shall use to obtain reimbursement for his expenses. It is as follows:

"\* \* \* At the end of each month, the sheriff and each deputy shall file with the county court an accurate and itemized statement, in writing, showing in detail the miles traveled by such officer, the date of each trip, the nature of the business engaged in during each trip, and places to and from which he has traveled. Such statement shall be signed by the officer making claim for reimbursement, verified by his affidavit, and filed by him with the county court. Whenever claim for reimbursement is made by a deputy, his statement shall also be approved in writing by the sheriff. The county court shall examine every claim filed for reimbursement, and if found correct, the county shall pay to the officer entitled thereto, the amount found due as mileage."

(Underlining, ours.)

If this allowance was made subsequent to October 9, 1951, for an expenditure subsequent to that time, the county court would still not have authority to grant the full amount. The limitation is \$75.00 which covers all of the expenses of investigation for one calendar month.

Honorable W. H. Holmes

CONCLUSION

It is therefore the opinion of this department that the county court did not, prior to the enactment of House Bill No. 100 of the 66th General Assembly, have authority to pay mileage to the sheriff for going beyond the boundaries of the State of Missouri for the purpose of returning a juvenile delinquent to this state. If expense was incurred subsequent to enactment of House Bill No. 100, the court could have included a part of such an expenditure within the \$75.00 maximum allowance to the sheriff for investigation, if it found the claim for reimbursement to be correct.

Respectfully submitted,

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Assistant Attorney General

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APPROVED:

  
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J. E. TAYLOR  
Attorney General