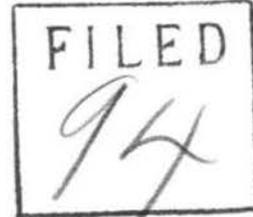


*Sheriffs*  
CONTEMPT:

Sheriffs may be guilty of contempt of court in failing to transport prisoners within a reasonable period after their sentence.

October 11, 1943

10-18



Honorable Ray E. Watson  
Judge Division No. 1  
Circuit Court of Jasper County  
Webb City, Missouri

Dear Judge Watson:

The Attorney-General wishes to acknowledge receipt of your letter of September 17, 1943, in which you requested an opinion of this department. This opinion request, omitting caption and signature, is as follows:

"I desire to ask your opinion on the matter of retention of prisoners in the County Jail by the Sheriff after they have been sentenced to a term in the State Penitentiary or the Intermediate Reformatory. Section 4106, R. S. 1939, provides that the Sheriff "without delay" shall cause the convict to be transported to the penitentiary. We now have confined in the County Jail prisoners who were sentenced to the State Penitentiary and Intermediate Reformatory at the June, 1943 Term of Court. In one case motion for new trial was filed, and final judgment and application for parole were disposed of July 10th, 1943, so that more than sixty days has elapsed since these prisoners were released to the Sheriff for delivery to the proper institutions.

"In view of Section 4106 would a Circuit Judge have authority to cite the Sheriff for contempt of Court for failure to transport the prisoner to the penitentiary "without delay"?

"It is my understanding that you have previously ruled that the prisoner does not commence serving his sentence until he has been delivered to the State Penitentiary or Intermediate Reformatory as the case may be. Is this still the case?"

The duty of a sheriff with regard to the transportation of prisoners after they have been sentenced to the Penitentiary or Intermediate Reformatory, is set out in Section 4106, R. S. Mo. 1939. This section provides as follows:

"Where any convict shall be sentenced to imprisonment in the penitentiary, the clerk of the court in which the sentence was passed shall forthwith deliver a certified copy thereof to the sheriff of the county, who shall, without delay, either in person or by a general and usual deputy, cause such convict to be transported to the penitentiary and delivered to the keeper thereof."

It will be noted that the foregoing section of the statutes seems to be enacted with the intention, on the part of the Legislature, that as quickly as is possible or reasonable the prisoner shall be taken to the Penitentiary. We make this statement because of certain terms used in such section. The first of these terms is the word "forthwith." "Forthwith" has been defined in Ballantine's Law Dictionary as, "with all reasonable diligence and dispatch" (5 R. C. L. 411) and "within a reasonable time." (15 R. C. L. 611). We further find the following definitions: "'Forthwith' when used in reference to time, is generally construed to mean without delay," (Bottle Mining & Mill. Co. v. Kern, 99 P. 994, 9 Cal. App. 527; and, "'Forthwith' is convertible with 'at once' and 'prompt,' and in its ordinary acceptation means 'at the same point of time'; immediately; without delay; at one and the same time; simultaneously; directly." Lewis v. Hajar, 16 N. Y. S. 534, 536. Other definitions in Vol. 17, Words & Phrases, Permanent Edition.

In view of the above definitions and construction of the word, "forthwith," it would seem that when the statute, aforesaid, orders the clerk of the court wherein the sentence is pronounced, to "forthwith deliver" a certified copy of the sentence to the sheriff, that such order means it shall be done immediately and without delay.

We now wish to consider the meaning of the clause "without delay" as used in the aforesaid section of the Missouri Statutes. In Vol. 45 of Words and Phrases, Per. Ed., we find the following definitions of the clause:

"The requirement of the administration of justice 'without delay' means without unreasonable and unnecessary delay."  
Ex Parte Ryan, 50 So. 385, 124 La. 356

and

"The words 'promptly and without delay' used to define a carrier's duty with reference to the transportation of goods, mean 'with reasonable promptness and without unreasonable delay.'" Burlingame v. Adams Exp. Co., 171 Fed. 902.

Considering Section 4106, R. S. Mo., set out above, in the light of the definitions cited, we feel that the intention of the Legislature in passing the aforesaid statute was that after a person had been sentenced by the court, the clerk of the court should immediately and without unreasonable delay issue a certified copy of the sentence to the sheriff, who in turn should immediately and without unreasonable delay transport the prisoner to the Penitentiary.

We have examined the certified copy of the sentence and judgment of the court, and notice that the court orders that the sheriff "of this county shall remove and safely convey the said defendant" etc. The order itself does not state that the sheriff shall execute it without delay or immediately. However, under the provisions of Section 4106, aforesaid, he is required to do so and if he does not, he then, in our opinion, becomes guilty of obstructing the administration of justice. So that the sheriff becomes guilty of contempt, if the obstruction of the administration of justice can be considered a contempt of court.

Before considering that question, we wish to state that it is the opinion of this department that any question of delay must be considered with a view as to whether such delay is reasonable or unreasonable. Of course, if a delay has been caused by some reasonable cause then an officer could be excused,

so we are only concerned here with delay that is unreasonable. Along this line we wish to call your attention to a definition of "reasonable time," which we think is applicable here. This definition is found in Vol. 36 of Words & Phrases, Per. Ed., and is as follows:

"'Reasonable time' is defined to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case." Bowen v. Detroit City Ry. Co., 20 N. W. 559, 54 Mich. 496.

As to whether the officer in this particular matter has held the prisoner for an unreasonable period of time, we are unable to say. This would be a question which would necessitate the person passing upon such matter to be in full possession of all of the facts in the case, which in this case we are not.

Returning to the question of contempt, we wish to cite you to a statement made in 17 C. J. S., page 10, which is as follows:

"Further, conduct which tends to obstruct the untrammelled and unprejudiced exercise of the judicial power is punishable irrespective of the place where committed."

Following the above authorities it appears to us, that if an officer obstructs the administration of justice that he may in such case be guilty of contempt of court. We further wish to cite 17 C. J. S., page 50, where the following statement is made:

"Other officers of court, likewise punishable for contempts committed by them, include \* \* \* \* and sheriffs and marshals."

#### Conclusion.

Therefore, it is the opinion of this department that if a sheriff holds a prisoner, after conviction, in the jail

for an unreasonable length of time, he can be adjudged guilty of contempt of court. It is further the opinion of this department that the court itself is the judge as to whether the time is reasonable or unreasonable, to be governed by the facts in each particular case. Further, it is the opinion of this department that the sheriff can be held accountable for neglect of duty as to a defendant sentenced to the Intermediate Reformatory, the same as if sentenced to the Penitentiary.

Respectfully submitted,

JOHN S. PHILLIPS  
Assistant Attorney-General

APPROVED:

---

ROY MCKITTRICK  
Attorney-General

JSP:EG