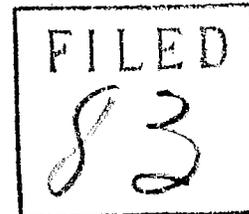


SHERIFF:

JUVENILE  
DELINQUENTS:

Sheriff entitled to no allowances for boarding juveniles held by him unlawfully. Sheriff entitled to \$1.25 per day per person for boarding said juveniles if they are held upon formal complaint or information and are being investigated prior to commitment, otherwise to not more than 75¢, amount to be set by county court.

March 12, 1946



4-4  
Honorable Forrest Smith  
State Auditor  
State Capitol Building  
Jefferson City, Missouri

Dear Mr. Smith:

This will acknowledge receipt of your letter of recent date requesting an opinion of this department, as follows:

"We request your official opinion as to the legality of charges, in the amount of \$1.25 per person per day, made by the sheriff of Clay County to the Clay County Court for boarding juveniles held by him in a portion of the county jail building away from the regular prisoners and held without ordinary arrest or commitment.

These juveniles are persons turned to the sheriff by the county welfare officer pending investigation as to their supposed delinquency.

The rate established by the county court for boarding prisoners confined in the county jail is seventy-five cents per day. (Section 13416, R.S. Mo., 1939)."

Article X, Chapter 56, Sections 9696 to 9718, R.S. Mo., 1939, deals with the detention, commitment and trials of delinquent minors in counties of 50,000 inhabitants or less. Clay County falls within this classification.

Section 9701, reads, in part, as follows:

"When any reputable person, being a resident of the county, shall file a complaint with the prosecuting attorney, stating that any child in the county appears to be a neglected or delinquent child, the prosecuting attorney shall thereupon file with the clerk of the juvenile court a petition

in writing, setting forth the facts and verified by his affidavit. It shall be sufficient that the affidavit be on his information and belief. It shall be the duty of the prosecuting attorney immediately thereafter to fully investigate all the facts concerning such neglected or delinquent child including its school attendance, home condition, and general environment and to report the same in writing to the juvenile court, and upon hearing of such complaint to appear before the juvenile court and present evidence in connection therewith. \* \* \*

Section 9702, provides that a summons shall be issued requiring the appearance of the child after the filing of the petition. The last part of that section provides as follows:

"\* \* \* If any person summoned, as herein provided, shall fail without reasonable cause to appear and abide the order of the court, or to bring the child, such person may be proceeded against as in the case of contempt of court. If it shall appear to the satisfaction of the court that there is no person in charge or care of the child, the court may order the sheriff to take control of the child and bring him into court."

Section 9703, relating to the court proceedings in delinquent cases, reads, in part, as follows:

"\* \* \* Pending the disposition of any case, the child may be retained in the custody of the person having charge of the same, or may be kept in some place of detention provided by the county, or by any association having for one of its objects the care of delinquent or neglected children, or in such other custody as the court may direct; but in no case shall any child be placed in a jail, common lockup or other place where said child can come in contact at any time or in any manner with adults convicted or under arrest. In all cases wherever possible the child shall be left in the custody of relatives pending hearing in court."

Section 9710, reads as follows:

"Whenever there is to be a child brought before the court under this law, it shall be

the duty of the clerk of said court to so notify the probation officer in advance. It shall be the duty of the probation officer to make such investigation of the child as may be required by the court, to be present in court at the hearings of all cases, and to furnish to the court such information and assistance as the judge may require, and to take charge of any child before and after hearing, as may be directed by the court. Probation officers shall have all the powers of peace officers anywhere in the state for the purpose of this article."

A thorough investigation of the statutes reveals no procedure for the handling of delinquent minor cases other than that indicated by the above quoted sections. The statutes, therefore, require that a complaint be lodged and that a petition be filed prior to the time that a delinquent minor is investigated or detained. An examination of the powers of probation officers reveals no right vested in them to detain, or hold in custody, delinquent minors without the filing of such complaint either by themselves or by a citizen of the county.

Your letter, together with further information you have very kindly furnished us, indicates that not only has there been no arrest or commitment in the situation you refer to, but that there has been no complaint or information filed, according to the statutes, against said delinquent minors. Therefore, we are of the opinion that the sheriff would be entitled to no allowance for the board of said juveniles where they are being held prisoner without statutory authority. This result, of course, follows from the fact that there is no statutory allowance to the sheriff for board where a person is being unlawfully detained. Statutory fees allowed officers are for the performance of official duties. *Smith v. Pettis Co.* 136 S.W. (2d) 282, 345 Mo. 839, 844; *State ex rel. O'Connor v. Riedel* 46 S.W. (2d) 131, 329 Mo. 616, 624.

Your letter mentions the two statutory allowances to the sheriff for boarding prisoners. Since the applicability of the statutes providing these two allowances has been raised by your letter, we shall proceed to a discussion of the two sections which provide for the said allowances.

Section 13413, R.S. Mo., 1939, provides, in part, as follows:

"\* \* \* The sheriff or other officer who shall take a person, charged with a criminal offense, from the county in which the offender

is apprehended to that in which the offense was committed, or who may remove a prisoner from one county to another for any cause authorized by law, or who shall have in custody or under his charge any person undergoing an examination preparatory to his commitment more than one day for transporting, safe-keeping and maintaining any such person, shall be allowed by the court, having cognizance of the offense, one dollar and twenty-five cents per day for every day he may have such person under his charge, when the number of days shall exceed one, and five cents per mile for every mile necessarily traveled in going to and returning from one county to another, and the guard employed, who shall in no event exceed the number allowed the sheriff, marshal or other officer in transporting convicts to the penitentiary, shall be allowed the same compensation as the officer. One dollar and twenty-five cents per day, mileage same as officer, shall be allowed for board and all other expenses of each prisoner. \* \* #"

Section 13416, R. S. Mo., 1939, provides as follows:

"Hereafter sheriffs, marshals and other officers shall be allowed for furnishing each prisoner with board, for each day, such sum, not exceeding seventy-five cents, as may be fixed by the county court of each county and by the municipal assembly of any city not in a county in this state; Provided, that no sheriff shall contract for the furnishing of such board for a price less than that fixed by the county court."

These sections have been construed and applied by two Missouri cases. In State ex rel. Dickmann v. Clark (1902) 170 Mo. 67, the court applied the provisions of Section 3246, R. S. Mo., 1899. That section was the same as the present section 13413, supra, in so far as the provisions pertinent to this discussion are concerned. The prisoner arrested was held pending an examination by a committing magistrate as to whether or not he should be committed to prison to await a trial. The court held that, during this period, the prisoner was in the sheriff's custody by virtue of a *capias* and that, therefore, the sheriff was entitled to the \$1.25 fee provided by the statute, because the situation

fell within the letter of the statute allowing \$1.25 per day to the sheriff for keeping the prisoner "while undergoing an examination preparatory to his commitment". The court quoted with approval Thomas v. County of St. Louis, 61 Mo. 547: (l.c. 76)

"\* \* \* 'It is the duty of a sheriff acting under a *capias* to arrest and safely keep the person therein named, and to have the body of such person when and where he shall be commanded by such writ; and the statute makes it the duty of all jailers to receive from the sheriff or other officers all persons who shall be apprehended by them for offenses against this State. When a prisoner is arrested under a *capias*, he is held thereunder until he is either bailed, committed or discharged; and until such prisoner is either bailed, committed or discharged, any imprisonment of him in the county jail is at the discretion and for the protection of the officer executing the writ, as well as to secure the body of such prisoner, and is not a committing of such person to jail, within the meaning of the statute; and for the safe-keeping of any person in his custody undergoing an examination preparatory to commitment, he is entitled to a per diem allowance, where the number of days such person is so held exceeds one. (Wagn. Stat., 626, Sec. 14.) The words "committing any person to jail," relate to the execution by the sheriff of an order or warrant of commitment made or issued by some officer exercising judicial functions." \* \* \*"

The above case dealt with the \$1.25 fee to which the sheriff is entitled under Section 13413, *supra*, and not to the board allowances of a similar amount, but a reading of the section shows clearly that the \$1.25 board allowances is to be given in connection with the fee provision.

The question of which of the two allowances for Board was to be allowed in a case where a prisoner was arrested after an information had been filed against him and he was being held by the sheriff to await a trial on the merits of the charges, was ruled on in State ex rel. Million v. Allen (1905) 187 Mo. 560. The court in that case set out clearly the situations to which the two statutory allowances applied by stating: (l.c. 564)

"A commitment means a judicial order, and until

such an order is made the person arrested is the sheriff's prisoner by virtue of the *capias*. (Thomas v. County of St. Louis, 61 Mo. 547.) After an order of commitment has been made by the court, the sheriff or jailor is only entitled to a sum not exceeding fifty cents a day for the board of the prisoner. (Sec. 3246, R.S. 1899.)"

\* \* \* \* \*

"\* \* \* The statute allows a sheriff one dollar and a quarter a day for having a prisoner in his charge 'while undergoing an examination preparatory to his commitment,' and only allows fifty cents a day for keeping and boarding a prisoner after he is committed to prison or while he is in prison awaiting a trial on the merits of the charge against him.

"The reason for or injustice in the difference is a matter for the legislature solely, and not for the courts. The courts can only enforce the statutory law as it is written."

The allowance of fifty cents referred to in the above case was raised to seventy-five cents by an amendment in 1917, to what is now Section 13416, R.S. Mo., 1939. (Laws of 1917, p. 494)

#### CONCLUSION.

It is, therefore, the opinion of this department that (1) if no complaint or information has been filed, charging a minor with delinquency, the sheriff of Clay County, Missouri is entitled to no allowances for the boarding of said minor; (2) if a complaint or information has been filed and the minor is being held to await trial on a charge of delinquency, or if a commitment has been issued out of a court of competent jurisdiction, the sheriff would be entitled to an allowance, not to exceed seventy-five cents, set by the county court under the provisions of Section 13416, R.S. Mo., 1939; (3) if a complaint or information has been filed against such child and the child is under investigation pursuant to a determination of whether he should be tried on the charges alleged, the sheriff would be entitled to an allowance of one dollar and a quarter for boarding said child after the first day, pursuant to Section 13413, R.S. Mo., 1939.

Respectfully submitted,

SMITH N. CROWE, JR.  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

SNC:dc