

SHERIFFS:

Boarding and Feeding Prisoners;

1) The Sheriff must furnish wholesome food to prisoners in jail. 2) A county should furnish equipment therefor. 3) If the county has no such equipment it may lease equipment from the Sheriff for such purpose by contract for a reasonable sum to be included in the actual cost of feeding prisoners. 4) The Sheriff must make a sworn statement each month of such actual cost. 5) The County Court must audit same to arrive at what such actual and necessary cost amounts to and then draw a warrant on the county treasury, payable to the Sheriff for such actual and neces-

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sary cost. 6) The Sheriff cannot lawfully employ a relative within the fourth degree of consanguinity or affinity to prepare meals for prisoners, or for any other purpose, and charge the county therefor, but may accept services of a member of his family without cost to the county.

Honorable D. P. Jennings
Prosecuting Attorney
Montgomery County
Montgomery City, Missouri

3-11-52

Dear Mr. Jennings:

This is the opinion you requested from this Department respecting the procedure to be followed by the Sheriff in furnishing board and food to prisoners in the county jail of your county. Your letter in detail, submitting numerous questions to be considered, reads as follows:

"The County Court and the Sheriff of this County have requested that I obtain an opinion from you regarding the cost of boarding and feeding prisoners lodged in the County Jail in accordance with Chapter 221 in the Revised Statutes of Missouri for 1949. Section 221.090 provides that the Sheriff shall submit a statement supported by his affidavit of the actual costs incurred by him in the boarding of prisoners.

"As to what constitutes actual costs, the County Court and the Sheriff have not been able to agree. Under the arrangements in this County heretofore, the County Court has not furnished any equipment for the preparing of meals or the serving of same, nor have they provided any equipment for the keeping of prepared or unprepared food. In the past, our Sheriffs, because of this fact, have used their own personal equipment

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and the Sheriff's wife, or some member of his family would prepare the meals. Request an opinion as to whether or not the County Court, under the Statutes, are required to furnish the necessary equipment for keeping, preparing, and serving the foodstuff to prisoners.

"In determining the cost of food furnished to prisoners, if the Sheriff furnishes the necessary equipment and some member of his family prepares the meals, should a reasonable allowance for the use of said equipment and the labor in the preparation of meals be considered as a part of the costs? If the Sheriff has no member of his family physically able to prepare said meals would he be authorized to hire someone to do this work and include that amount in the costs of meals furnished the inmates of the Jail?

"I would appreciate an answer to these requests as soon as possible for the reason that at the present time, our County Court and Sheriff have been unable to reach an agreement on the payment of the costs for feeding the prisoners."

Montgomery County, Missouri, is a county of the third class.

The provisions of our statutes governing the boarding and feeding of prisoners when confined in the county jail of a county of the third class are found in Section 221.090, Chapter 221, RSMo 1949. Sub-section 1 of said Section 221.090 prescribing what the Sheriff shall do respecting the boarding and feeding of prisoners confined in the county jail of such county reads as follows:

"Boarding of prisoners--expense, how paid, (class three and four counties).--1. In each county of the third or fourth class, the sheriff shall furnish wholesome food to each prisoner confined in the county jail. At the end of each month, he shall submit to the county court a statement

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supported by his affidavit, of the actual cost incurred by him in the boarding of prisoners, together with the names of the prisoners, and the number of days each spent in jail. The county court shall audit the statement and draw a warrant on the county treasury payable to the sheriff for the actual and necessary cost."

The statutes of this State prior to the enactment of said Sub-section 1 of Section 221.090, have provided that the County Courts of the counties of the State should fix the maximum price to which the Sheriff was entitled per day for the boarding and feeding of each of such prisoners.

The Legislature, naming both third and fourth class counties to be affected, Laws of Missouri, 1949, page 571, enacted the present law governing this question, and now appearing, as hereinabove noted, as Section 221.090, RSMo 1949.

Sub-section 1 of said Section 221.090, as will be readily observed, in its purpose and effect, relieves the County Courts of the several counties of any duty or authority to fix the sum to be allowed the Sheriff for furnishing board and food to prisoners and imposes that express and exclusive duty upon the Sheriff.

Said Sub-section 1 also provides that, at the end of each month, the Sheriff shall submit to the County Court a statement supported by his affidavit of the actual cost incurred by him in the boarding of such persons, together with the names of said prisoners and the number of days each spent in jail.

The duty imposed by said Sub-section 1 upon the County Court respecting the subject is that the Court shall audit the statement of the Sheriff to check the accounts and vouchers submitted each month by the Sheriff to determine what such necessary and actual cost is for furnishing board and meals to prisoners and draw a warrant on the county treasury, payable to the Sheriff, for the actual and necessary cost involved in furnishing wholesome food to such prisoners.

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The statute requires the Sheriff to furnish wholesome food to each prisoner confined in the county jail. Webster's New International Dictionary, Second Edition, page 2922, defines "wholesome" in definition 2 as: "Promoting physical well-being; beneficial to the health or the preservation of health; * * * ." The language of the statute makes no further reference to the character of food to be served such prisoners. Thus, it is left to the reasonable judgment of the Sheriff as to the items and character of the food to be purchased, to be kept on hand, to be cared for in such manner that the food will remain wholesome, and be so furnished to such prisoners. This, we believe, would necessarily require proper equipment reasonably adequate for preparing meals and the proper and safe-keeping of such foods, prepared or unprepared. The Sheriff is not required by law to furnish equipment for the upkeep of the county jail, or take from his own pocket funds to purchase equipment for the furnishings used in the maintenance of the county jail. The cases are numerous where our Appellate Courts have had such matters before them and have consistently held that it is the duty of the county to provide all county officers with proper furnishings, proper equipment and necessary means to maintain and carry out the duties of their respective offices. Where the statute has made no provision for compensation to be paid to such officers for furnishing such services or equipment, the county must pay for the same or reimburse a county officer when he has used his own funds for such purposes.

In Ewing vs. Vernon County, 216 Mo. 681, a suit was filed by the Recorder against the county for the recovery of postage expended by the Recorder over a period of four years one and one-half months. The Court held that the Recorder was entitled to be reimbursed for this postage and allowed recovery for the full period. The Court said, l.c. 695:

"* * * 'Where, * * * the law requires an officer to do what necessitates an expenditure of money for which no provision is made, he may pay therefor and have the amount allowed him. * * * Thus it is customary to allow officers expenses of fuel, clerk hire, stationery, lights, and other office accessories.'"

In the case of Boone County vs. Todd, 3 Mo. 140, (Reprint page 30), it appears that Todd, the Circuit Clerk

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of Boone County, furnished a house in which to maintain his office, for several years. Todd presented his account to the Circuit Court for allowance. That Court allowed him compensation as rent for his house and ordered the County Court to pay Todd. The County Court refused, and mandamus ensued. Upon an appeal, the Supreme Court held that the County should pay Todd for rent for the use of his house as an office. The Court, l.c. 13 (Reprint page 82), in so holding, said:

"* * * It is made the duty of the County Court, therefore, to provide houses for the public offices belonging to the counties, and until this is done, the county has no right to throw this burthen on the clerk; but should pay rent unless some equivalent is given to the clerk for the use of his house. * * * ."

Numerous other cases of like character have been so decided by our Appellate Courts, with like results.

It would necessarily, we believe, be a part of the furnishing of board and meals to prisoners confined in the county jail for the Sheriff to employ some person to prepare and serve their meals to the prisoners if he has no person upon whom he can depend without pay to perform such services.

You inquire in your letter if service by a member of the Sheriff's family in the preparation and serving of meals may be included as a part of the costs of furnishing board and meals to such prisoners.

If the Sheriff has a member of his family able and willing to prepare and serve the meals for prisoners, without charge, he may, of course, take advantage of that assistance, but he cannot lawfully employ any member of his family for such services or employment, nor may he bargain with the County Court to include the services of any member of his family as a part of the cost of preparing, cooking or serving meals for prisoners and include such services in the cost of food and board furnished inmates of the jail.

Section 6 of Article VII of the present Constitution of this State states:

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"Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment."

This is the nepotism provision of our Constitution.

The case of State ex inf. Norman, Prosecuting Attorney vs. Ellis, 28 S.W. (2d) 363, was before our Supreme Court on quo warranto to oust a Circuit Clerk of a county in this State for violation of our nepotism section of the Constitution because he had appointed his wife as his deputy clerk. Ouster of the Circuit Clerk for such offense was ordered by the Supreme Court. The Court held that a wife is within the prohibited degree of affinity in her marital relation to her husband prohibited by the Constitution. The Court so holding, l.c. 367, said:

"* * * She is related to him by affinity by reason of the engagement before the marriage, and that relationship of affinity continues after the marriage. The absurd fiction that he could not be related to her but is related to her blood kin by marriage disappears entirely."

We, therefore, believe it would be unlawful for the Sheriff to appropriate the services of any relative within the prohibited degree of relationship, either by consanguinity or affinity, including a member of his family, to prepare and serve meals to prisoners as a part of the cost of boarding and feeding prisoners and include any sum in his statement therefor to the County Court of the cost of furnishing such board and food to such prisoners. This would clearly be an employment prohibited by the section of the Constitution quoted.

We believe it would be proper and lawful for the County Court and the Sheriff to contract for the Court to pay a reasonable fixed sum to the Sheriff for the renting and leasing of any equipment he may own and which he necessarily uses in performing the duty of boarding and feeding prisoners. Section 49.270, RSMo 1949, states, in part, as follows:

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"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; * * * ."

It would appear plain that the Court, so having the right to lease any property, real or personal, for the benefit of the County, the County Court could enter into such a contract with the Sheriff if it chose not to furnish the necessary equipment for the performance of such duties by the Sheriff. Such contract, however, must be ordered of record and be executed by the Court and the Sheriff in proper and conventional form. Section 432.070, RSMo 1949, reads as follows:

"No county, city, town, village, school township, school district or other municipal corporation shall make any contract, unless the same shall be within the scope of its powers or be expressly authorized by law, nor unless such contract be made upon a consideration wholly to be performed or executed subsequent to the making of the contract; and such contract, including the consideration, shall be in writing and dated when made, and shall be subscribed by the parties thereto, or their agents authorized by law and duly appointed and authorized in writing."

The leasing or renting of property by a County Court for the benefit of a county under the authority of said Section 49.270, supra, has been approved by decisions of our Supreme Court. The case of Ebert vs. Jackson County was before the Supreme Court of Missouri, reported in 70 S.W. (2d) 918. The facts were that the County Court rented or leased a room for a courtroom and office for a Justice of the Peace. The Supreme Court held the contract valid as an implied power under Section 2078, R.S. Mo. 1929. The section there construed is our present Section 49.270, supra. Said section then, as now, read, in this particular, as follows:

"* * * Furthermore, it is also provided as follows: 'The said court shall have

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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. * * * ' Section 2078, R.S. 1929 (Mo. St. Ann. Sec. 2078, p. 2658)."

The construction of the same section, Bag. Stat. 1941, Sec. 9, now Section 49.270, was earlier before the Supreme Court in the case of Walker vs. Linn County, 72 Mo. 650. Of the Court's authority to lease property for the benefit of the county and caring for the county property the Supreme Court, l.c. 654, said:

"The duty devolved upon county courts in the foregoing sections of taking such measures as shall be necessary to preserve all buildings and property belonging to a county carries with it the power to bind the county in a contract which, in the exercise of the judgment of the court, may seem to be necessary to consummate the object for which the duty was imposed, and which, in point of fact, tends directly to consummate the object. * * * ."

Section 49.310, RSMo 1949, requires the County Court of each county of this State, mentioning courthouses and jails, to "acquire a site, construct, reconstruct, remodel, repair, maintain and equip said courthouse and jail * * * ."

Section 221.020, RSMo 1949, reads as follows:

"The sheriff of each county in this state shall have the custody, rule, keeping and charge of the jail within his county, and of all the prisoners in such jail, and may appoint a jailer under him, for whose conduct he shall be responsible."

We have observed from the decisions cited, excerpts from which are hereinabove quoted, that counties of this State must equip the offices of each county for carrying on the business of any such office. This includes Sheriffs' offices in all counties of the State. (Harkreader vs. Vernon County, 216 Mo. 696).

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We believe a contract made between the County Court with the Sheriff of any county for the leasing and use of equipment owned by the Sheriff for said purposes, and the leasing contract charge to be paid by the county, would not be invalid as against public policy. 15 C.J., page 517, on this subject, states the following text:

"* * * A county may contract with its ministerial officers, where such contracts are not prohibited by statute. * * * ."

The text quoted in 15 C.J. 517, under footnote 61, cites, in support thereof, the case of Board of Commissioners of Tippecanoe County vs. Mitchell, decided by the Supreme Court of Indiana, reported 30 N.E. 409. The Supreme Court of Indiana upheld the validity of the contract and the authority of the county to make it with the county clerk, where, I.c. 410, the Court said:

"The fact that the appellee was an officer of the county does not of itself authorize the conclusion that the contract is voidable because opposed to public policy. It is quite well agreed that the officers controlling the affairs of a public corporation may contract with ministerial officers of the corporation unless such contracts are prohibited by statute. * * * ."

(Evans v. City, 24 N.J. Law, 764; Detroit v. Redfield, 19 Mich. 376; Mayor v. Muzzy, 33 Mich. 61; McBride v. Grand Rapids, 47 Mich. 236, 10 N. . Rep. 353; U.S. v. Brindle, 110 U.S. 688, 4 Sup. Ct. Rep. 180; State v. Hauser, 63 Ind. 155.)

We are advised here that Montgomery County is without equipment to properly preserve food, prepared or unprepared, for such prisoners, and that, apparently, the Sheriff does have equipment which is being now used for such purposes. Considering the terms of said Section 49.270, supra, providing that the county is authorized to lease property, real or personal, for the benefit of the county, we believe that the County Court of Montgomery County would be acting lawfully and that the same would "be within the scope of its powers or expressly authorized by law" as is required by said Section 432.070, supra, in leasing such equipment from the Sheriff by

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contract under the provisions of said Section 49.270, supra.

It will be observed from the terms of said Section 432.070 that the consideration of such contract must be that the contract is to be performed or executed subsequent to the making of the contract. This means, we believe, that Montgomery County would not be authorized to agree in said contract to pay, nor would the Sheriff be authorized to agree in said contract to receive, any compensation from the county for any use made of the Sheriff's equipment for such purposes prior to the making of the contract. The provision noted in said Section 432.070 restricting the consideration of a contract, and the performance thereof, to be executed here subsequent to the execution of the contract is not in conflict, but is in obedience to and is not prohibited by Section 39, Article III of the present Constitution of this State which provides that the General Assembly shall not have power, under Sub-section (3):

"To grant or to authorize any county or municipal authority to grant any extra compensation, fee or allowance to a public officer, agent, servant or contractor after service has been rendered or a contract has been entered into and performed in whole or in part; ".

We also believe that the provisions of said Section 49.270, authorizing the entering into a contract between Montgomery County and the Sheriff of the County for the leasing by the county his said equipment for its use for such purposes subsequent to the making of the contract, constitute express authority of law so to do and that said Section 49.270 and said contract if made thereunder, would not be in conflict, but would be in compliance with and in obedience to, and not prohibited by, Section 39 of Article III of the present Constitution which states in Sub-section (4) thereof, that the General Assembly shall not have power,

"To pay or to authorize the payment of any claim against the state or any county or municipal corporation of the state under any agreement or contract made without express authority of law; ".

Sub-section 1 of said Section 221.090 requires the County Court to audit the statement of the Sheriff as to the verity of the account he presents for compensation for boarding

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and feeding prisoners confined in the county jail. Webster's New International Dictionary, page 100, defines "audit" in definition 1 as: "A formal or official examination and verification of accounts, vouchers and other records; * * * ."

Sub-section 1 of said Section 221.090 places the duty and responsibility upon the Sheriff to determine what is reasonably necessary to provide, prepare and furnish for board and meals to the prisoners confined in a county jail. Said Sub-section 1 requires that at the end of each month the Sheriff shall submit to the County Court a statement supported by his affidavit of the actual cost incurred by him in the boarding of prisoners, together with the names of the persons and the number of days each spent in jail.

We believe, under the facts submitted to us and the application thereto of the authorities here cited and quoted, we have answered the several questions submitted to us in your request for this opinion.

CONCLUSION.

It is, therefore, considering the premises, the opinion of this Department that:

- 1) The duty of furnishing, at actual cost, wholesome food to prisoners confined in the county jail of any county in this State is imposed by law upon the Sheriff.
- 2) At the end of each month the Sheriff shall submit to the County Court his sworn statement of the actual cost incurred in the boarding of prisoners, with the names of the prisoners and the number of days each spent in jail.
- 3) The County Court is required by the statute to audit the monthly statement of the Sheriff to determine if such board and food have been furnished at actual cost, and if so to then draw a warrant on the County Treasury payable to the Sheriff for such actual cost of performing such services.
- 4) For the purpose of such audit, the Sheriff should submit to the County Court accounts and vouchers showing what the actual cost of such service has been for the preceding month.
- 5) It is the duty of the county to supply all furnishings and equipment, including equipment required for preserving

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foodstuffs, prepared and unprepared, and serving the same to prisoners confined in the county jail, necessary for maintaining a county jail.

6) If the county does not have such equipment on hand but the Sheriff does have his own personal equipment available for furnishing wholesome food to prisoners in the county jail, the county may lawfully lease, by contract, such equipment from the Sheriff and pay the Sheriff, as rent for the leasing of such equipment, a reasonable sum as part of the actual cost incurred by the Sheriff in performing such services.

7) The Sheriff of every county in this State is prohibited by law from employing for hire, as a part of the cost of preparing, cooking or serving meals to prisoners confined in the county jail of such county, or for any other employment whatever, any relative within the fourth degree of consanguinity or affinity.

8) If the Sheriff of any county has a member of his family who is able and willing to prepare and serve meals to prisoners in the county jail without costs, the Sheriff may lawfully take advantage of such services, but he cannot make a charge against the county therefor.

Respectfully submitted,

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APPROVED:

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J. E. TAYLOR
Attorney General

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