

SHERIFF'S FEES: Authority of the sheriff to bill county court for expenses of guarding insane persons.

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Honorable George P. Adams
Prosecuting Attorney
Audrain County
Mexico, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you request an official opinion from this department, which reads as follows:

"Please advise whether or not the sheriff is entitled to bill the county for the cost of employing a deputy for the purpose of guarding an insane patient confined in the county hospital awaiting a sanity hearing in the probate court, or must the sheriff provide such deputy and pay the costs thereof out of his own pocket.

"The deputy employed for this purpose was not the deputy who receives a regular salary from the county, for the reason that the paid deputy was engaged in other duties."

Under the general rule of statutory construction an officer who is entitled to fees must point to the statute authorizing such claims. With this rule in mind, we refer you to Laws of Missouri 1945, page 1562, which provides for the appointment of deputies by sheriffs in counties of the third class. Section 2 of this act reads as follows:

"The sheriff in counties of the third class shall be entitled to such number of deputies and assistants, to be appointed by such official, with the approval of the judge of the circuit

court, as such judge shall deem necessary for the prompt and proper discharge of his duties relative to the enforcement of the criminal law of this state. The judge of the circuit court, in his order permitting the sheriff to appoint deputies or assistants, shall fix the compensation of such deputies or assistants. The circuit judge shall annually, and oftener if necessary, review his order fixing the number and compensation of the deputies and assistants and in setting such number and compensation shall have due regard for the financial condition of the county. Each such order shall be entered on record and a certified copy thereof shall be filed in the office of the county clerk. The sheriff may at any time discharge any deputy or assistant and may regulate the time of his or her employment."

Under this section it would seem that the sheriff is only authorized to employ such deputies as the judge of the circuit court may authorize.

However, under Article 18, Chapter 1, R.S. Mo. 1939, which relates to insane persons, we find these sections which would be applicable to the question you have submitted. Section 497, R.S. 1939, provides as follows:

"If any person, by lunacy or otherwise, shall be furiously mad, or so far disordered in his mind as to endanger his own person or the person or property of others, it shall be the duty of his or her guardian, or other person under whose care he or she may be, and who is bound to provide for his or her support, to confine him or her in some suitable place until the next sitting of the probate court for the county, who shall make such order for the restraint, support and safekeeping of such person as the circumstances of the case shall require."

Section 498, R.S. 1939, provides:

"If any such person of unsound mind, as in the last preceding section is specified, shall not be confined by the person having charge of him, or there be no person having such charge, any judge of a court of record, or any two justices of the peace, may cause such insane person to be apprehended, and may employ any person to confine him or her in some suitable place, until the probate court shall make further orders therein, as in the preceding section specified."

Section 499, R.S. 1939, provides:

"The expenses attending such confinement shall be paid by the guardian out of his estate, or by the person bound to provide for and support such insane person, or the same shall be paid out of the county treasury, upon the order of the county court, after the same shall be duly certified to them by the probate court."

Referring particularly to Section 498, supra, it will be noted it is provided that if a person has custody and charge of an insane person, and such person does not confine the insane person if it is necessary for him to be so confined, or if no person has charge of the insane person, then the judge of any court of record may cause such insane person to be apprehended and may employ any person to confine him or her in a suitable place until the probate court makes further order.

It will also be noted from Section 499, supra, that if such insane person does not have an estate sufficient to pay the aforesaid expenses that it should be paid out of the county treasury, upon order of the county court, after such expense has been certified by the probate court.

Conclusion.

From the foregoing, it is the opinion of this department that the sheriff would not have authority to incur expenses

by employing a deputy for the purpose of guarding an insane patient confined in the county hospital awaiting a sanity hearing in the probate court unless some judge of a court of record has caused such insane person to be apprehended and has employed the sheriff to confine such person in a suitable place until the probate court makes further orders therein relating to the custody of such insane person. It is further the opinion of this department that if the sheriff is employed by a judge of a court of record to apprehend an insane person and confine him, as provided in said Section 498, R.S. No. 1939, and if such person does not have an estate sufficient to pay the expenses of confinement, that the county treasurer, upon an order of the county court, should pay for such confinement when a bill for same is duly certified to the county court by the probate court.

Respectfully submitted,

TYNE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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