

SHERIFFS: Amount paid janitor for going after food at restaurant for persons confined in county jail and returning tray and dishes constitutes actual costs, as provided in Section 4, page 1563, Laws of Missouri 1945.

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March 15, 1948

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Honorable Fred C. Bollow
Prosecuting Attorney
Shelby County
Shelbina, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion, which reads:

"A situation has arisen regarding the payment of certain bills by the County Court to our Sheriff. Under the provisions of House Bill No. 899, Section 4, said Sheriff is to be reimbursed for the actual expense to him of feeding prisoners. We do not have any combination jail and residence in our County. The jail is located in the basement of the Court House, there being no residence. The Sheriff makes his home a distance from the County seat. The Sheriff made arrangements with a local restaurant to furnish food to the prisoners. The janitor of the Court House, at the request of the Sheriff, brought the meals from the restaurant to the jail and returned the utensils to the restaurant. The Sheriff has presented to the Court a bill of .50¢ per day for sums paid to the janitor for such services. Is the amount for these services to be treated as a part of the 'cost of feeding prisoners' within the meaning of the law. The County Court wishes to pay this bill if it is proper under the statute, but desires your opinion as to the propriety of making such payment. Please advise."

Section 4, page 1563, Laws of Missouri 1945, requires a sheriff to furnish wholesome food to all persons in his care and custody that may be lodged in the county jail, and further

provides that the sheriff at the end of each month shall submit to the county court a statement of actual cost incurred by him in the feeding of persons under his custody. Section 4 reads:

"The sheriff shall have the custody and care of persons lodged in the county jail and shall furnish them with clean quarters and wholesome food. At the end of each month the sheriff shall submit to the county court a statement supported by his oath or affirmation of the actual cost incurred by him in the feeding of persons under his custody together with the names of the persons, the number of days each spent in the jail, and whether or not the expenditure is properly chargeable to the county or to the state under the law. The county court shall audit said statement and draw a warrant on the county treasury for the amount of the actual cost payable to the sheriff. The county clerk shall submit quarterly to the State Director of Revenue a statement of the cost incurred by the county in the feeding of the prisoners properly chargeable to the state and the state shall forthwith pay the same to the county treasury."

The foregoing law is somewhat flexible in that it does not name any specific amount of money that the sheriff may expend for such food. We think this is probably true, for the reason the same facilities are not afforded the sheriffs in all counties for feeding persons incarcerated in county jails. For instance, it might cost more for some sheriffs to adequately feed persons than other sheriffs, for the reason that in some counties the sheriff's residence joins the county jail and in other cases they are under the same roof. Such sheriffs could probably save the county on costs of feeding such persons. However, in this instance, we understand the sheriff resides at a considerable distance from the jail, as there is no other adequate and available living quarters for him.

The primary rule of statutory construction is to ascertain from language used the legislative intent, if possible, and give

it that effect. See *Donnelly Garment Co. v. Keitel*, 193 S.W. (2d) 577, 354 Mo. 1138. Under Section 4, supra, the sheriff is entitled to be reimbursed for the actual cost incurred by him in feeding of persons under his custody. It can readily be seen that this does not restrict him to the actual costs of the food. "Actual cost" has been defined by the courts under numerous conditions and circumstances. The court, in *Boston Molasses Co. v. Molasses Distributors' Corporation*, 175 N.E. 150, 1.c. 152, 274 Mass. 589, held that the term "cost," or "actual cost," does not at all times have the same meaning and varies according to the circumstances in which it is used. In so doing, the court said:

"The construction of the lease depends upon the intention of the parties to be ascertained by considering all its terms, giving to the words used the natural and reasonable meaning in the light of the facts to which they apply and the circumstances in which they are used. *Grennan v. Murray-Miller Co.*, 244 Mass. 336, 138 N.E. 591; *Clark v. State Street Trust Co. (Mass.)* 169 N.E. 897; *Lovell v. Commonwealth Thread Co., Inc. (Mass.)* 172 N.E. 77. Some liberality of construction in favor of a lessee has been suggested in case the terms of a lease are of uncertain or doubtful meaning. *Carpenter v. Pocasset Manuf. Co.*, 180 Mass. 130, 133, 61 N.E. 816; *Watts v. Bruce*, 245 Mass. 531, 534, 139 N.E. 650. The term 'cost' or 'actual cost' is not a technical one having at all times the same meaning. It is a general or descriptive term which may have varying meanings according to the circumstances in which it is used. In *Fillmore v. Johnson*, 221 Mass. 406, 412, 109 N.E. 153, the court held that upon the facts the actual cost of finishing paper should include such fixed charges as heat, light, rent, office expenses, superintendence, repairs, depreciation and other incidentals. See *Municipality of Bulawayo v. Bulawayo Waterworks Co., Ltd.*, (1908) A. C. 241, 247.

"Under the terms of the lease the arbitrators had a right to take into consideration in determining the cost of steam the overhead expenses enumerated in their report. The exclusion of 'executive overhead to the Lessor' from the 'actual cost' in defining the limit which the rates by the arbitrators could not exceed by implication suggests that the parties contemplated that other overhead expenses might be included. The case of Stanwood v. Comer, 118 Mass. 54, is not controlling authority to the contrary. The lease there contained no such provision as to executive overhead. It was a lease of part of a building. The owner bound himself to put in 'proper apparatus' to heat the building by steam. The clause in the lease concerning which the controversy arose was the lessee's agreement 'to pay the proportionate part of the expenses of heating' the building by steam. The court interpreted the covenant to mean that the lessee would contribute his proportion of the actual outlay or expenditure incurred in the current, ordinary and regular supply and management of the apparatus for the general benefit of the tenants, and held that the tenant was not liable for the interest on the cost of the heating apparatus and its appliances, the expense of keeping them in repair and their depreciation in value. The terms of the lease in the case at bar, the subject matter to which they apply and the circumstances known to the parties when the lease was executed distinguished this case from that last cited."

In *State v. Northwest Poultry & Egg Co.*, 281 N.W. 753, l.c. 755, the court held that "actual cost" imports the exact sum expended rather than a part of the cost. In so holding, the court said:

"'Actual cost' has no common-law significance, and it is without any well understood trade or technical meaning. 'It is

a general or descriptive term which may have varying meanings according to the circumstances in which it is used.' Boston Molasses Co. v. Molasses Distributors' Corp., 274 Mass. 589, 594, 175 N.E. 150, 152. It imports the exact sum expended or loss sustained rather than the average or proportional part of the cost. Lexington & West Cambridge R. Co. v. Fitchburg R. Co., 75 Mass. 226, 9 Gray 226. Its meaning may be restricted to overhead or extended to other items. 1 C.J.S. Actual, 1440. It has been used to include overhead, rent, depreciation, taxes, insurance, etc. Bulawayo Municipality v. Bulawayo Waterworks Co. Ltd., (1908) A.C. 241; Boston Molasses Co. v. Molasses Distributors' Corp., supra. Whether actual cost in this case is limited to gasoline, or whether it extends to depreciation, license fees, insurance, repairs, the wages of the driver, or the actual worth of the services of an operator if driven by the owner is not stated. * * *"

In view of the foregoing definitions of the term "actual cost" and taking into consideration the language used in the statute to be construed, especially that part which requires a sheriff to make a statement of actual cost incurred by him in the feeding of persons in his custody, we are of the opinion that such language should be construed to include the fifty cents per day paid to the janitor, or anyone else, for going to the restaurant for the food for the persons confined in the county jail and returning the dishes and tray to the restaurant. Under the circumstances, if the sheriff should be required to do this, it would require too much of his time from his duties, and, in the final analysis, it would cost the county or state, as the case may be, much more than fifty cents per day allowed for such services.

CONCLUSION

Therefore, it is the opinion of this department that the fifty cents per day paid the janitor, or anyone else, for going

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after the food to be served to persons in the county jail and under the care and custody of the sheriff, and returning the dishes and tray to the restaurant, should be considered as a part of actual costs incurred in the feeding of such persons, as provided in Section 4, page 1563, Laws of Missouri 1945.

Respectfully submitted,

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APPROVED:

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