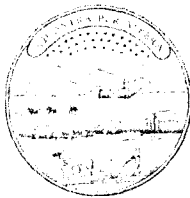


FILE

Subject County Officers
Sheriff

Copy to _____



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

February 20, 1974

Opinion No. 74- 63

Mr. Joseph W. Zima
Legal Advisor
Shawnee County Sheriff's Department
Courthouse
Topeka, Kansas 66603

Re: K.S.A. 1973 Supp. 22-4603

Dear Mr. Zima:

You have asked for our opinion as to whether the tasks or work performed within the jail by trustees in Shawnee County Jail are "suitable public employment" as contemplated by the above-captioned statute. You stated that the type of work performed by the trustees includes floor cleanup, tank cleanup, cook, cook's assistant, dishwashers, food servers, laundry, patrol car wash and Sheriff's office cleanup. In exchange for these tasks, the trustees receive certain privileges not allowed to other prisoners at the jail such as access to the kitchen, more freedom of movement within the jail areas, visitation, newspaper and magazines privileges and others.

Formerly, prior to enactment of the 1970 criminal code, this question was governed by K.S.A. 62-2109, which stated in pertinent part thus:

"Whenever any able-bodied male prisoner is confined in the county jail of any county or the jail of any town or city, having been convicted of a misdemeanor or of the violation of an ordinance of such town or city and being confined in punishment therefor, the sheriff of such county . . . shall, under the direction of the county commissioners . . . compel such person to work at hard labor (8) hours of every working day"

Mr. Joseph W. Zima
February 20, 1974
Page 2

"The sheriff of such county shall, under the direction of the board of county commissioners, when no other work is available compel the said prisoners to work upon the public roads or highways of such county in the making or repairing of such roads or highways."

The operation of the statute was aptly summarized in Dutton v. Ford County Comm'rs., 136 Kan. 567, 16 P.2d 949 (1932) thus:

"It provided that able-bodied prisoners confined in the county jail who had been convicted of a misdemeanor might be compelled to work at hard labor eight hours of every working day, and that the sheriff, under the direction of the county commissioners, should take prisoners out to work on the public highways when no other work was available"

K.S.A. 22-4603 succeeds this provision:

"(1) Whenever any able-bodied prisoner is confined in the county jail or the jail of any town or city, having been convicted of a misdemeanor or of a violation of an ordinance of such town or city, the sheriff of such county, or the marshal or the chief of police of such town or city, under the direction of the county commissioners or the governing body of the town or city, may cause such persons to work at suitable public employment for not to exceed eight hours on each working day." [Emphasis supplied.]

A prisoner so employed is entitled to be given credit at the rate of five dollars per day on any fine and costs imposed on him.

You suggest that "suitable public employment" under K.S.A. 22-4603 may be found only in "situations of road work and maintenance and public works." Under the former statute, the sheriff could require his prisoners to work at "hard labor (8) hours of every working day," and "when no other work is available" he could compel them to work on the public roads and highways of the county.

The term "suitable public employment" was not found in K.S.A. 62-2109. There is nothing in the new code of criminal procedure to suggest that the term as used by the 1970 Legislature was intended to bear such a limited meaning, including only public road and

Mr. Joseph W. Zima
February 20, 1974
Page 3

highway repair and maintenance. If a sheriff ordered a prisoner to work at other than road and highway construction, repair and maintenance under the former statute, he could not be heard to deny the sheriff's right to do so, for the statute specified only that he could be required to work at eight hours hard labor per day, and if no other work was available, at road and highway work. The sheriff was free to require a prisoner to work at any hard labor he deemed appropriate and reasonable, and no prisoner could deny the statutory authority of the sheriff to do so.

Similarly, under K.S.A. 22-4603, no prisoner may be heard to deny the right of the sheriff to require him to work at "any suitable public employment" for not more than eight hours per day, whether the work is on county roads and bridges, or of a different, but suitable, nature. The term "public" imports, in our view, the requirement that the work be for and in behalf of the county or city, and not for private benefit of the sheriff, guards, or other public officials. The term "suitable" suggests some necessary measure of discretion which must be exercised by the sheriff to determine upon the kinds of employment suitable for the prisoners in his charge.

There exists no basis, in our view, for a construction of the statute that purely as a matter of law, the term "suitable public employment" includes no more than road and highway work. Nothing in either its statutory history or the judicial construction put upon its predecessor affords adequate ground for imposing such a limited construction purely as a matter of law. It may be, of course, that the most customary usage of prisoner labor has historically been on road and highway work. It is surely unlikely, however, that this has historically been the only use of prisoner labor. If the Legislature had wished to acknowledge the historical practice of devoting prisoner labor to road work in the new code of criminal procedure, it could easily have done so by using apt language. On the contrary, however, it omitted any reference whatever to work on the "public roads and highways of such county," and referred only to "suitable public employment."

There exists simply no basis, in our view, for concluding purely as a matter of law that certain kinds of tasks, such as floor cleanup, tank cleanup, cooking, dishwashing, food service, laundry, car cleaning and maintenance and office cleanup do not constitute "suitable public employment" while work on roads and highways does constitute "suitable public employment." The distinctions between these kinds of tasks are unsubstantial and without any reasonable basis when sought to justify a classification as "suitable public employment" or, otherwise, as it were,


Mr. Joseph W. Zima
February 20, 1974
Page 4

as "unsuitable public employment." Indeed, tasks of a housekeeping and janitorial nature within the county jail and other county buildings might very reasonably be deemed perfectly reasonable, useful and "suitable public employment" for prisoner labor.

It does not necessarily follow, however, that every task willingly undertaken by a prisoner is mandatorily compensable under K.S.A. 22-4603. The sheriff is necessarily entitled to adopt and enforce reasonable rules and regulation in the management of the jail. It is surely reasonable that the sheriff might provide by jail regulation that prisoners who volunteer to perform designated tasks and assignments within the jail may be afforded various privileges reserved only for volunteers and others specially entitled to them, such as visitors' privileges, special dining privileges, telephone and reading material access, and other similar privileges. The proffered privileges constitute an inducement to those who are willing to volunteer and who are trustworthy with such assignments and privileges. Those prisoners who do volunteer and are accepted, on the basis of the regulations, are performing what might very readily be deemed "suitable public employment," but not because they are required to do so, but because they volunteered to do so, on the basis of privileges which they would thus enjoy. For such volunteered labor, compensation is not required under K.S.A. 22-4603.

If you have further questions concerning this matter, please do not hesitate to contact us.

Very truly yours,



VERN MILLER
Attorney General

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