



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 81-190

Mr. Merrill L. McCue
Kearny County Sheriff
305 North Main
Lakin, Kansas 67860

Re: County Sheriff -- Charge and Custody of Jail --
Prisoners' Meals

Synopsis: There is no legal basis for a county sheriff to receive any remuneration in connection with providing meals for county prisoners over and above the actual and reasonable expenditures made by the sheriff in providing such meals. Cited herein: K.S.A. 1980 Supp. 19-101a, K.S.A. 19-212, 19-229, 19-811, 19-1903, 19-1910 (as amended by L. 1981, ch. 350, §1), 19-1917, 19-1930 (as amended by L. 1981, ch. 350, §2), and 28-109.

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Dear Sheriff McCue:

As Sheriff for Kearny County, you inquire whether a sheriff may receive an amount out of general county funds for "jail keep" which is in excess of the amount of actual expenditures. This inquiry arises out of a situation in which the board of county commissioners decided to decrease the daily allowance to be paid the sheriff for preparation of prisoners' breakfasts from \$5.00 per day per prisoner to \$1.85 per day per prisoner. It is our understanding that the \$1.85 per day allotment is sufficient to defray the actual expense incurred for the preparation of the prisoners' breakfasts.

Mr. Merrill L. McCue

Page Two

In order to answer your inquiry, it is necessary to review a number of statutes which concern the authority and responsibility of the board of county commissioners and the sheriff, as well as Kansas case law concerning the administration of a county jail and the feeding of prisoners. In addition to the general home rule power of boards of county commissioners "to transact all county business and perform such powers of local legislation and administration as they deem appropriate" (K.S.A. 1980 Supp. 19-101a), there are specific grants of statutory authority that are pertinent here. For example, K.S.A. 19-212 provides in part:

"The board of county commissioners of each county shall have the power, at any meeting:

. . . .

" Second, To examine and settle all accounts of the receipts and expenses of the county, and to examine and settle and allow all accounts chargeable against the county; and when so settled, they may issue county orders therefor, as provided by law.

. . . .

" Sixth, To represent the county and have the care of the county property, and the management of the business and concerns of the county, in all cases where no other provision is made by law."

Also related to this area is K.S.A. 19-229, which provides:

"The boards of county commissioners of the several counties of this State shall have exclusive control of all expenditures accruing, either in the publication of the delinquent tax lists, treasurer's notices, county printing, or any other county expenditures."

Thus, as a general rule, the board of county commissioners has the authority and responsibility to control the expenditure of county funds, and absent any statutory provision constraining such powers, the board has the authority to approve expenditures for the feeding of prisoners.

For the most part, the duty of the sheriff to provide for the care and custody of prisoners is prescribed by statute. The general responsibility of the sheriff is provided in K.S.A. 19-811, which states:

Mr. Merrill L. McCue
Page Three

"The sheriff shall have the charge and custody of the jail of his county, and all the prisoners in the same, and shall keep such jail himself, or by his deputy or jailer, for whose acts he and his sureties shall be liable."

K.S.A. 19-1903 also is relevant, stating thusly:

"The sheriff of the county by himself or deputy shall keep the jail, and shall be responsible for the manner in which the same is kept. He shall keep separate rooms for the sexes, except where they are lawfully married. He shall supply proper bread, meat, drink and fuel for the prisoners." (Emphasis supplied.)

In addition, K.S.A. 19-1910 (as amended by L. 1981, ch. 350, §1) provides:

"When a prisoner is committed to a county jail in a criminal action, the board of county commissioners shall allow the sheriff reasonable charges for maintaining such prisoner."

Additionally, K.S.A. 19-1917 and 19-1930 (as amended by L. 1981, ch. 350, §2) authorizes a county jail to be utilized for the safekeeping of fugitives from other states, United States prisoners, prisoners from any city located within the county and parole violators committed pursuant to K.S.A. 1980 Supp. 75-5217 and amendments thereto. When so utilized, these statutes make it clear that the sheriff or jailor shall be entitled to reasonable compensation for the custody and care of such prisoners. However, before receiving from the board of county commissioners the reasonable charges for the care and maintenance of any prisoner, the sheriff must also provide an oath along with his bill that proper care and maintenance was afforded the prisoner while in jail. K.S.A. 28-109.

An overview of the application of these laws and their predecessors, discloses, initially, that in 1911 the Kansas Supreme Court discussed the responsibility of the county to make necessary repairs and provide supplies for the county jail. Norton v. Sims, 85 Kan. 822 (1911). The Court reviewed the statutes applicable to the care and maintenance of the county jail and affirmed the trial court's decision that the county was liable for such necessary expenses. Pertaining to the role of the sheriff, the Court in Day v. Cowley County Commissioners, 146 Kan. 492, 497 (1937), declared that "[t]he management and supervision of a county jail is a part of the official business of the sheriff's office." See also Commissioners of Atchison Co. v. Tomlinson, 9 Kan. 167 (1872). In fact, as early as 1879 Kansas had statutes which, as construed by

Mr. Merrill L. McCue
Page Four

the Kansas Supreme Court, mandated that "[t]he sheriff of the county is required to keep the jail . . . and he is required to supply the prisoners with proper food and drink at the expense of the county. Comp. Laws of 1879 Ch. 53, §§ 1, 3, 10." [Now K.S.A. 19-1903, supra.] Hendricks v. Commissioners of Chautauqua Co., 35 Kan. 483, 485 (1886). Concerning the amount of compensation a sheriff should receive for providing boarding for prisoners, the Kansas Supreme Court in two early cases, Atchison County v. Tomlinson, 9 Kan. 167 (1872) and Commissioners of Republic Co. v. Kindt, 16 Kan. 157, 158 (1876), held that a sheriff "cannot claim extra compensation as a matter of right over and above the amount fixed by law."

It is abundantly clear from the foregoing authority, specifically K.S.A. 19-1903 and 19-1910, that the sheriff, by law and due to his official capacity, has a duty to properly feed prisoners committed to the county jail in a criminal action. It is equally clear that, even though the authority and responsibility for overseeing the expenditure of county funds is vested in the board of county commissioners as a general rule, the board also has a specific statutory duty to "allow the sheriff reasonable charges for maintaining such prisoner." K.S.A. 19-1910, as amended by L. 1981, ch. 350, §1. Additionally, in interpreting these statutes through the years, the Kansas Supreme Court has steadfastly held that a sheriff cannot claim extra compensation as a matter of right over and above the amount fixed by law. Commissioners of Republic Co., supra.

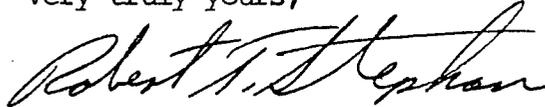
However, since the sheriff has a legal duty to provide prisoners with proper food at the expense of the county, if the board of county commissioners refused to allocate money for prisoners' meals, or allocated an amount that was inadequate to cover the reasonable cost of said meals, the sheriff, in our opinion, would have a valid claim against the county for the amount of money necessary to defray such costs. As previously noted, though, such eventuality is not at issue here, since the Board of County Commissioners of Kearny County apparently is allowing sufficient moneys to defray the reasonable charges for providing such meals.

Kansas law today no longer states specific dollar amounts to be allocated for the feeding and housing of prisoners in county jails. This is likely due to differences which exist among the counties in respect to boarding arrangements established for county prison inmates. Thus, considering the respective duties of the sheriff and board of county commissioners discussed herein, it is apparent that the determination of the proper amount of county funds to be allocated for such expenses should most appropriately be made cooperatively by the sheriff and board of county commissioners, after considering all the factors involved (e.g., jail conditions, jail occupancy, whether kitchen facilities are available or whether catering services are most suitable, etc.).

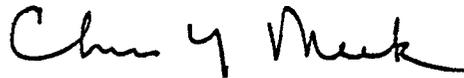
Mr. Merrill L. McCue
Page Five

In conclusion, while recognizing that the sheriff has the charge and custody of the jail in his county and the prisoners therein, the board of county commissioners controls the disbursement of funds to defray the costs incurred in the performance of those duties. As a result, it is our opinion that since the board has allocated a reasonable amount of money to provide breakfasts for county prisoners, which amount you agree defrays the reasonable costs thereof, you have no legal basis to claim or receive any remuneration over and above that amount.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Christopher Y. Meek
Assistant Attorney General

RTS:TDH:CYM:may