

It is clear from these authorities that a lien reserved in a deed of conveyance is to be considered a mortgage, and, therefore, in my opinion comes within the provisions of the Intangible Tax Act and is taxable.

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OFFICIAL OPINION NO. 45

May 24, 1951.

Honorable Otto K. Jensen,  
State Examiner,  
State Board of Accounts,  
Room 304, State House,  
Indianapolis, Indiana.

Dear Sir:

Your letter of May 15, 1951, requests an opinion on the following questions to-wit:

"1. Are county sheriffs entitled to be compensated for custodial care of insane persons who are ordered confined to jail pending admittance into a state institution?

"2. Are county sheriffs entitled to expenses in addition to mileage when transporting prisoners or patients in a conveyance furnished by the sheriff?

"3. If your answer to both questions is in the negative, are sheriffs entitled to be reimbursed for any legitimate extraordinary expense that may incur if a claim therefor is supported by a receipt for such expenditure?"

You further state in your letter that there is a growing tendency among sheriffs who claim and receive a *per diem* fee under a subterfuge of administering special care to insane persons who are ordered confined to jail by the Judge of the Court pending admittance to a state hospital. Since fees have been paid upon the certificate of the Clerk pursuant to provision of Burns Section 22-1211 under the theory that the Clerk directs how such person shall be cared for and that the practices reached such proportions that it has caused con-

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siderable administration attention and it is believed that legal control is necessary.

I find no statute specifically authorizing sheriffs to be compensated for custodial care of insane persons who are ordered confined to jail pending admittance to a state institution, nor am I aware of any express provision authorizing the sheriff to receive a *per diem* fee for administering special care to such insane persons. However, Section 22-1211, Burns 1950 Replacement, same being the Acts of 1927, Chapter 69, Section 11, page 179, provides as follows:

“If any person is found to be insane and is committed to a hospital for insane, the clerk of the circuit court of the county in which the proceedings were held shall direct how such insane person shall be taken care of until he can be admitted to the hospital for insane to which he has been committed. If all things needful for the comfort and proper care of such insane person be not otherwise provided by the relatives or friends or from the estate of such insane person, if any there be, it shall be the duty of the clerk of the circuit court to furnish them, and the same shall be paid out of the treasury of such county, on certificate of the clerk and warrant of the county auditor. Under no circumstances shall any insane person be confined in the county jail, unless he is found to be dangerous and violent, and then only on order of the judge of the circuit or superior court.”

It is therefore my opinion that county sheriffs are not entitled to a *per diem* for the keeping of insane persons in the county jail upon the order of the court but are entitled only to his actual expenses to be paid as stated in the above section. A like opinion has heretofore been issued by this office. 1936 O. A. G. page 243.

Section 49-1315, Burns 1951 Replacement, same being the Acts of 1932, Special Session, Chapter 26, Section 1, page 40 reads in part as follows:

“The sheriffs of the several counties of this state shall be entitled to charge and collect the following amounts on account of the services performed by such

sheriffs, which shall belong to and be the property of the sheriff performing such service:

“(a) For removing persons to the state prison, reformatory, state farm, women’s prison, boys’ school, girls’ school, any state hospital or other state institution, the following amount:

“1. If such persons be transported by a common carrier, the actual cost of transportation for the sheriff, for each person in custody and for each attendant allowed by law who may actually accompany such sheriff, together with any other expenses necessarily incurred.

“2. If such persons be transported by a conveyance furnished by the sheriff, the sum of eight cents (8c) per mile for each mile necessarily traveled, by each such conveyance, but not more than one (1) mileage shall be charged for any one (1) conveyance, although transporting more than one (1) person.” (This amount was increased to 10c per mile by Chapter 113, Acts of 1951).

In reference to your question Numbered 2, you state in your letter that there is a prevailing practice among sheriffs who furnish their own conveyance to claim in addition to mileage other incidental expenses. Such expenses generally include the price for meals for the prisoner as well as the sheriff while enroute to the institution. Heretofore opinions of the Attorney General seem to be liberal in allowing other expenses and that such interpretation as to lead to considerable abuse that it is thought and believed by some that the legislature in 1932 and in 1951 fixed the mileage rate in excess of common carrier rates in order to take care of automobile and other minor incidental expenses. Likewise it is the thought and belief of some that if perchance a patient or prisoner becomes ill while enroute and requires the services of a physician that the sheriff is entitled to be reimbursed for any such legitimate expenses when his claim therefore is supported by a receipt.

I respectfully refer you to an opinion of the Attorney General addressed to your office under date of March 10, 1938, likewise to an opinion of the Attorney General addressed

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to your office under date of July 2, 1936. The questions presented in 1936 were:

“What mileage and expense allowance is the sheriff entitled to for taking an insane patient to the hospital or removing one therefrom?”

“If the court directs that an assistant, male or female, accompany the sheriff while taking an insane patient to the hospital, or removing one therefrom, what mileage is such assistant, or female attendant, entitled to for such services so rendered under order of the court?”

The question presented in 1938 was:

“Is a sheriff entitled to a fee of \$1.50 per day for the support of each patient being conveyed to or from a state hospital?”

I quote from the 1936 opinion of the Attorney General:

“It will be noted that no provision is made in the paragraph providing for a mileage charge where the persons are being transported by a conveyance furnished by the sheriff, for any other expenses, but obviously other expenses necessarily incurred are contemplated. I do not think it is intended that the mileage allowance is to cover anything other than the cost of transportation and if, under order of court, assistants to the sheriff are required, payment for such assistants is authorized, not upon the basis of mileage but upon the basis of services rendered. I think this is made clear by the language used in paragraph 1, *supra*, quoted from the Act and also by the provisions of Section 2 which apply to a case where the commissioners furnish the motor vehicle, in which latter case it is expressly provided that ‘the sheriff shall be entitled to be reimbursed for any other expenses which may lawfully incur other than mileage.’”

It was the holding of the Attorney General’s opinion March 10, 1938, that he in all things was in accord with the foregoing opinion and further that the sheriff was not entitled

to charge and collect a fee of \$1.50 per day for the support of patients taken to insane hospitals but if additional expenses were necessarily incurred during the trip such amount as were necessary and actually expended might be lawfully claimed by such sheriff.

I am likewise in accord with the foregoing decisions. My answer to your second question, therefore, is that sheriffs are entitled to be reimbursed for any and all additional expenses necessarily and actually incurred for the prisoner or patient during the trip.

Question Numbered 3, I believe is fully answered by question Numbered 2.

I am not aware of any express statute authorizing a sheriff to be reimbursed for moneys expended for his own meals; nor any expressed or implied statute that the sheriff shall be compensated or paid any additional or *per diem* fee for services as herein set out. It is my opinion therefore, that such expenses would not be considered within the provision of Section 2, *supra*, which provides: "The sheriff shall be entitled to be reimbursed for any other expenses which may lawfully incur other than mileage."

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OFFICIAL OPINION NO. 46

May 25, 1951.

Mr. Otto K. Jensen,  
State Examiner,  
State Board of Accounts,  
Room 304, State House,  
Indianapolis, Indiana.

Dear Sir:

Your letter of May 1, 1951, has been received requesting an official opinion concerning bonds given by Treasurers of County Boards of Education prior to the enactment of Chapter 164 of the Acts of 1951.

Your specific question is as follows:

"Did liability terminate on all such bonds at the effective date of Chapter 164, Acts 1951?"