

SHERIFF: Duties and fees

- (1) Duty in regard to meetings of Co. Board of Equalization;
- (2) " " " " summoning appraisers;
- (3) Fees for bringing prisoners from other counties;
- (4) " in extradition proceedings;
- (5) " transferring prisoners from Co. jail to penitentiary.

September 1, 1933.



Hon. Walter G. Stillwell,  
Prosecuting Attorney,  
Marion County,  
Hannibal, Missouri.

Dear Walter:

Your letter of August 12, 1933 addressed to Attorney General McKittrick relating to certain questions on which you desire an opinion has been handed to me for attention.

As your letter contains five different questions, we shall herewith quote each paragraph of same separately and undertake to render an opinion thereon. The first paragraph states:

"Should the sheriff attend all meetings of the County Court setting as a Board of Equalization? If your answer to this be in the affirmative is he entitled to the same compensation as he receives for attending meetings of the County Court?"

Under Sec. 9811 R.S. of Mo. 1929, which is as follows:

"There shall be in each county in this state, except the city of St. Louis, a county board of equalization, which board shall consist of the county clerk, who shall be secretary of the same, but have no vote, the county surveyor, the judges of the county court, and the county assessor, which board shall meet at the office of the county clerk on the first Monday in April of each year: provided, that in any county having adopted township organization, the sheriff of said county shall be a member of said board of equalization: provided further, that in counties containing a population of more than seventy thousand, such board shall meet upon the first Monday of March in each year."

it will be noted that the sheriff in counties having adopted township organization is a member of the board; however, Marion County has not adopted township organization and the sheriff is therefore not a member. Section 9818, R.S. Mo. 1929, which is as follows:

"The judges of the county court, the county surveyor, the county assessor, the sheriff, and the county clerk shall receive \$5.00 per day for each day they shall act as members of the county board of equalization: Provided, that this section shall not apply to boards of equalization who are paid a salary,"

mentions that the sheriff shall receive his per diem the same as the other members. However, in our opinion, this section refers to Sec. 9811 R.S. Mo. 1929 and he is only a member when the county is under township organization. The only section in which the sheriff is mentioned as having any connection with the County Board of Equalization is Sec. 9815, R.S. Mo., 1929, which is as follows:

"The said board of equalization shall have power to send for persons and papers and compel the attendance of witnesses in relation to any appeal before them, and it shall be the duty of the sheriff of the county to execute such process as may be issued to this end. A majority of said board shall constitute a quorum, and a majority of them present shall determine all matters of appeal or revision."

Upon consulting Sec. 11518, R.S. Mo. 1929, which enumerates the general duties of the sheriff, and Sec. 11789 R.S. Mo. 1929, which sets forth the fees of the sheriff, we do not find any mention of his duties pertaining to the County Board of Equalization. We therefore conclude that it is not his duty to attend the meetings of the County Board of Equalization, but he is subject to his duties under Sec. 9815, R.S. Mo. 1929.

It is well settled law in this state that all fees and all duties of the sheriff are purely statutory, and if the statute does not set out his duties and expressly fix his fees, there is no manner by which he may obtain fees. In the case of *State ex rel v. Brown*, 146 Mo., the court said (l.c. 406):

"It is well settled that no officer is entitled to fees of any kind unless provided for by statute, and being solely of statutory right, statutes allowing the same must be strictly construed. \*\*\*\* The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform, as such officer, unless the statute gives it. When the statute fails to provide a fee for services he is required to perform as a public officer, he has no claim upon the state for compensation for such services."

It is therefore the opinion of this department that the sheriff is not required to attend the meetings of the Board of Equalization, and if he does, he is not entitled to any compensation.

Paragraph 2 of your letter is as follows:

"Is it the duty of the sheriff to act in the appointment of Appraisers in Eminent Domain proceedings where the county is a party and when it is necessary to condemn private property for public use?" (Your letter 8/12/33)

"In road condemnation matters where the Circuit Judge appoints appraisers, is it the duty of the Sheriff to summons into court these appraisers for the purpose of taking the usual oath, and if so is the Sheriff entitled to the same fee and mileage as when serving a subpoena in a civil case?" (Your letter 8/29/33).

Under this question, as stated in the prior question, the sheriff is governed entirely in his duties and fees by statutory provision. There is no provision for his receiving his mileage and fees for serving notice as outlined above unless it be found under the general section relating to his fees, which is Sec. 11789, R.S. Mo. 1929, the portion of which we think might be applicable being as follows:

"For each mile actually traveled in serving any venire summons, writ, subpoena, or other order of court, when served more than five miles from the place where the court is held, provided that such mileage shall not be charged for more than one witness subpoenaed or venire summons or other writ served in the same cause on the same trip  
 .....\$.10."

We assume that this is a condemnation wherein the procedure is the same or is made referable to "condemnation proceedings by corporations". We think that the statutes are silent with reference to the duties of the sheriff in the appointment of commissioners or appraisers in any method of procedure in eminent domain. Sec. 1342, R.S. Mo. 1929 provides for the manner of appointment of commissioners as follows:

"The court, or judge thereof in vacation, on being satisfied that due notice of the pendency of the petition has been given, shall appoint three disinterested commissioners, who shall be freeholders, resident of the county in which the real estate or a part thereof is situated, to assess the damages which the owners may severally sustain by reason of such appropriation,  
 \*\*\*\*\*"

It is the opinion of this department that if the Court, in his order appointing said commissioners, should include in the order that the sheriff notify the commissioners of their appointment, then the sheriff of the county, under the provision quoted in Sec. 11789, R.S. Mo. 1929, if the commissioners live five miles or more, would be entitled to his fees. But if the Court did not include in his order of appointment of the commissioners that the sheriff notify said commissioners of their appointment but directed the Circuit Clerk to do so, as has been my observation in Missouri in many condemnation proceedings of this character, then the sheriff would not be entitled to any fees or mileage. We repeat that he must come within the statutes before receiving any fees.

Paragraph 3 of your letter states:

"In the event the sheriff goes to another county and returns a prisoner to his own county for which he has a warrant, is he entitled to additional compensation other than his mileage and fees for serving a warrant? This question is being asked

because some sheriffs have the idea that they are entitled to additional compensation in lodging up to the date of the arraignment."

We are at a loss to understand how a sheriff would be entitled to any additional compensation for lodging or boarding a prisoner which he has returned to his own county. Sec. 11794, R.S. Mo. 1929 provides the maximum amount for boarding prisoners, said section being as follows:

"Hereafter sheriffs, marshals and other officers shall be allowed for furnishing each prisoner with board, for each day, such sum, not exceeding seventy-five cents, as may be fixed by the county court of each county and by the municipal assembly of any city not in a county in this state: Provided, that no sheriff shall contract for the furnishing of such board for a price less than that fixed by the county court."

If the county court of your county fixes the amount of board the sheriff shall receive for each prisoner confined in the jail, it matters not if the prisoner is awaiting trial, awaiting arraignment, awaiting preliminary examination, or when or how he was apprehended and brought to the county; the amount he shall receive for boarding said prisoner should not vary from the amount he receives for boarding any other prisoner. In other words, if a prisoner is confined in jail, the sheriff receives a stipulated amount for boarding him irrespective of why or how he is confined. This is our conclusion, if we understand your question correctly. Under Sec. 11791, R.S. Mo. 1929 we find the following portion of the statute relating to additional fees the sheriff shall receive when transporting a prisoner from the county in which he has been apprehended to the county of the crime:

\*\*\*\*\*The sheriff or other officer who shall take a person, charged with a criminal offense, from the county in which the offender is apprehended to that in which the offense was committed, or who may remove a prisoner from one county to another for any cause authorized by law, or who shall have in custody or under his charge any person undergoing an examination preparatory to his commitment more than one day for transporting, safe-keeping and maintaining any such person, shall be allowed by the court, having cognizance of the offense, one

dollar and twenty-five cents per day for every day he may have such person under his charge, when the number of days shall exceed one, and five cents per mile for every mile necessarily traveled in going to and returning from one county to another, \*\*\*\*\*

and the sheriff is entitled to the above mentioned fees. We repeat that in the absence of any statutory provision, and we fail to find the same, the sheriff is not entitled to any additional fees under circumstances as outlined in your letter.

Paragraph 4 of your letter is as follows:

"In extradition proceedings if the Sheriff is appointed messenger of the State of Missouri, is he entitled to any compensation other than actual and necessary expenses in returning the prisoner to his county?"

Under Sec. 3588, R.S. Mo. 1929, expenses of the messenger are always within the discretion of the Governor of the State, said section being as follows:

"The expenses which may accrue under the last section, being first ascertained to the satisfaction of the governor, shall, on his certificate, be allowed and paid out of the state treasury, as other demands against the state."

This section does not make it mandatory on the sheriff to be the messenger. The Governor could appoint any other person he desired; therefore, the various fees which the sheriff in his official capacity might claim are not applicable. In the case of State ex rel v. Allen, 180 Mo. 27, the Court said:

"Under the statute quoted (Sec. 2744 R.S. 1899) the duty of determining the question of the compensation and expenses of such messenger is vested solely in the Governor and he is the head of a coordinate branch of the government, and all his acts as such are in that capacity; hence, he cannot be interfered with in the discharge of his duties by the courts."

In making out the expenses incurred by the sheriff as messenger, it is the opinion of this department that he should include the number of miles traveled, claiming said mileage, the expenses

of the prisoner, his own expenses, the number of miles by rail, and any other legitimate expenses and fees which the conscience of the sheriff or messenger might prompt him to include. In the last analysis it will not matter what the sheriff or messenger wishes to charge, but it will be wholly within the discretion of the Governor as to what amount he shall receive.

Your last question, No. 5, is as follows:

"In transferring a convicted felon from the county jail to the penitentiary at Jefferson City, on what basis is the sheriff's mileage computed and is he entitled to have a guard with every prisoner?"

We are not rendering you an opinion on this question, as our records show you were recently mailed two former opinions relating to the subject matter, and it will be needless for us to repeat the same.

We thank you for the last paragraph of your letter, but we do want you to feel that you are not in any wise imposing on this department by asking any question which might be a perplexing problem to you. This department is ready at all times to render you any assistance possible, and please feel at liberty to write us at any time.

With best regards,

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

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Roy McKittrick

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