

INSANE PERSONS )

Sheriff entitled to fee for executing warrant  
of arrest in insanity proceedings.

October 24, 1949

11/9/49

Honorable David E. Impey  
Prosecuting Attorney  
Texas County  
Houston, Missouri



Dear Sir:

Reference is made to your request for an official opinion  
of this Department, reading as follows:

"Please advise me as to what fee, if any,  
the Sheriff is entitled for executing a  
warrant to arrest an alleged insane person  
under Section 9336, Laws 1945, executed  
at the same time as the service of Notice  
of Inquiry as to Sanity."

The warrant of arrest referred to in your letter of inquiry  
is that issued under the provisions of Section 9336, Missouri R.S.A.,  
permitting the apprehension of alleged insane persons and the hold-  
ing of such persons in custody pending the adjudication. We note  
that no provision is contained therein respecting the fees to be  
charged by a sheriff executing such warrant.

In the premises the rule declared in *Smith v. Pettis County*,  
136 S.W. (2d) 282, would be applicable. In that case the Supreme  
Court said at l. c. 285:

"The rule is established that the right  
of a public official to compensation must  
be founded on a statute. It is equally  
established that such a statute is strict-  
ly construed against the officer. *Nodaway  
County v. Kidder*, Mo. Sup. 129 S.W. 2d 857;  
*Ward v. Christian County*, 341 Mo. 1115, 111  
S.W. 2d 182. \* \* \*"

Proceedings to inquire into the alleged insanity of a person  
are civil in nature. We quote from *Ex Parte Trant*, 175 S.W. (2d)  
161, at l.c. 164:

"A lunacy proceeding is a civil, as dis-  
tinguished from a criminal proceeding; it

is a proceeding in personam by the state; the public is interested in the welfare of the person alleged to be insane; and the informant who starts the proceeding cannot withdraw the complaint without the consent of the court. State v. Holtkamp, supra. \* \* \*

We, therefore, must resort to statutes providing for fees of sheriffs in civil cases to determine whether or not such statutes authorize the charge and collection of a fee for executing the warrant of arrest. The fee statute of sheriffs for the service of process in civil cases is found as Section 13411, R. S. Missouri, 1939. Included in said section we find the following:

"For serving every notice or rule of court, notice to take depositions or citation. . . . .50¢"

It is our thought that the warrant referred to in Section 9336, Missouri R. S. A., is comprehended within the allowance for serving a "notice or rule of court," and, therefore, the sheriff is entitled to the fee set out of fifty cents.

CONCLUSION

In the premises we are of the opinion that a sheriff executing the warrant mentioned in Section 9336, Missouri R. S. A., is entitled to a fee of fifty cents for such service.

Respectfully submitted,

WILL F. BERRY, JR.  
Assistant Attorney General

WFB/feh

APPROVED:

J. E. TAYLOR  
Attorney General 