

SHERIFFS:

Sheriff of third class county may appoint deputies to assist him in election duties. Sheriff fixes and is liable for payment of compensation to such deputies and is not entitled to be reimbursed for compensation paid deputies by county.

ELECTIONS:

February 23, 1950

Mr. Herbert S. Brown
Prosecuting Attorney
Grundy County
Trenton, Missouri



2/23/50

Dear Sir:

This is to acknowledge receipt of your recent letter requesting an opinion of this department based upon questions arising from the interpretation of a previous opinion of this office which has been furnished you. It appears that the opinion upon which your present inquiries are based is opinion No. 64, dated March 24, 1949, and entitled: "Sheriffs: Elections: Sheriffs of third class counties may appoint deputies to assist him in election duties. Such deputies must look to Sheriff for their compensation." Your present request for an opinion reads as follows:

"Reference is made to your Opinion Number 64-49, dated May 24th, 1949, and rendered to Hon. J. P. Morgan, Prosecuting Attorney of Livingston County, Chillicothe, Missouri.

"Your office has heretofore furnished me with a copy of this opinion.

"In connection with the opinion furnished Mr. Morgan, I have the further and additional questions to submit to your office for opinion, and which are as follows, to-wit:

"(1) Does a Sheriff of the County of the Third Class appoint, with the approbation of the Judge of the Circuit Court, such deputies as may be necessary to properly perform the election duties formerly enjoined by law on the office of Constable, to elections that are purely township elections, as well as to a State-wide or County-Wide, election, such as a primary or general election? (In this connection, Grundy County, Missouri is a County operating under township organization.

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"(2) In a State-wide or County-wide election, if the Sheriff of Grundy County, Missouri appoints, with the approbation of the Judge of the Circuit Court, such deputies as may be necessary to perform the election duties formerly enjoined by law on the office of Constable, does the Circuit Judge fix the rate of pay for such deputies for acting as a deputy on any election day, and if so, is the Circuit Judge limited to fixing the amount of pay for the deputy at \$3.00 per day, as is limited by Section 13339, Laws of Missouri, 1943, page 872, or can the Circuit Judge fix the amount of pay for each of said deputies at his discretion.

"(3) In a State-wide or County-wide election, if such deputies appointed to perform election duties must look for the Sheriff for their compensation, as is held in your Opinion Number 64-49, is the Sheriff, in turn, entitled to be recompensated out of the County Treasury?

"(4) In a purely township election, does the Township Board or the County Treasurer recompensate the Sheriff for any money paid by him to such deputies for performing election duties, and in a purely township election is the compensation of the deputies performing such election duties, limited to \$3.00 per day, or may the Circuit Court allow such deputies more than \$3.00 per day at his discretion?

"(5) Is the Sheriff entitled to any mileage expense incurred by him in notifying the deputies appointed of their appointment to act as a deputy on election day and that they are to perform the election duties formerly enjoined on Constables?"

We understand your first inquiry as referring to the right of a sheriff of a third class county to appoint deputies, with the approval of the circuit judge, to assist in the performance of certain election duties now required by law to be performed by the sheriff, and whether the appointment of such deputies may be for service in what has been termed "purely township elections," as well as those that are "state-wide" or "county-wide."

In the opinion referred to in the first paragraph of your letter it was held that the sheriff of a third class county might appoint, with the approbation of the circuit court such deputies as may be necessary to enable the sheriff to properly perform the election duties formerly enjoined by law on the constable. That it was unnecessary for a deputy to be present

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at each voting place in the county and that such deputies must look to the sheriff for their compensation as they are not entitled to any salary.

The opinion referred to Section 1, Laws of 1945, page 1079, which provides that whenever the word "constable" should be used in any statute hereafter, it should be deemed to refer exclusively to, and to mean "sheriff."

Other sections of law referred to and which are pertinent to a discussion of the questions before us are:

Section 11489, R. S. Mo. 1939, which reads in part as follows:

"The sheriffs of their respective counties shall provide, at the expense of their counties, two ballot boxes for each precinct in each municipal township in said counties, and deposit the same with the constable of the proper township, whose duty it shall be to preserve the same, and have such boxes present at the proper time and place, at all elections in his township, for the use of the judges of the elections.

Section 11494, R. S. Mo. 1939, which reads as follows:

"The constable shall attend the elections in his township, and perform such duties as are enjoined on him by law, under the direction of the judges."

Section 13399, Laws of Mo. 1943, which reads in part as follows:

"Constables shall be allowed fees for their services as follows:

* * * * *

"For each day or part thereof required in erecting the booths, taking them down, and attending any election in his township, when required to do so by the judges of election, per day - - - - - \$3.00."

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Section 13133, R. S. No. 1939, reads as follows:

"Any sheriff may appoint one or more deputies, with the approbation of the judge of the circuit court; and every such appointment, with the oath of office indorsed thereon, shall be filed in the office of the clerk of the circuit court of the county."

None of the above statutes nor any others that we have been able to find place, place any limitation on the power of the sheriff to appoint deputies for election duties. For example, the statute does not say that the deputies appointed must possess any special qualifications, that the sheriff is entitled to a certain number, or that deputies appointed may only serve in a particular kind of election.

The words, "at all elections in his township," "attend the elections in his township," attending "any elections in his township," indicate that it was the duty of the constable, and under recent statutes the duty of the sheriff to attend every election in his county and perform whatever duties in connection with same the law enjoined on the sheriff.

It seems clear to us that the legislative intent in the enactment of laws in regard to the appointment of deputy sheriffs was not to provide a set of hard and fixed rules to govern in such matter but that the appointment of deputies was left within the sound discretion of the sheriff, subject however to the approval of the circuit judge of his county. We feel that such discretion was wisely given to the sheriff, for what officer could better determine the matter than he whom the law held responsible for the proper performance of election duties. It seems that the number of election duties to be performed by the sheriff and his need for assistance in the proper performance of same is of more significance than the kind of election held.

Since no statutes limit the power of the sheriff to appoint deputies to assist him in these duties it appears his appointment of deputies, subject to the approval of the circuit judge, is final.

Therefore, in answer to your first inquiry it is our opinion that the sheriff of a third class county may with the approbation of the circuit court appoint a sufficient number of deputies as in his discretion may be necessary to assist him in the performance of his election duties at any election that may be held in your county.

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Your second inquiry is whether or not the compensation of those deputies appointed for election duties in your county in connection with a "state-wide" or a "county-wide" election is to be fixed by the circuit court. That in the event it should be held that the circuit court has the power to fix the compensation of such deputies, whether the court is limited to the sum of \$3.00 per day for each deputy serving on election day in accordance with the provisions of Section 13399, Laws of 1943, page 872, or whether the court may fix such compensation at some other sum.

The opinion now under discussion refers to Sections 1, 2 and 3, Laws of 1945, page 1562, and states that under the provisions of Section 2 of the Act, a sheriff of a third class county may appoint deputies with the approbation of the circuit court, as may in the discretion of that court be sufficient to assist the sheriff in the proper performance of his duties relating to the enforcement of the criminal laws of the state and that the court may fix the compensation of the deputies so appointed.

It appears that under the provisions of this act, deputies can only be appointed and paid to assist the sheriff in criminal matters and are not entitled, and the law makes no provision for their compensation in civil matters. However, in the opinion it was held that under the provisions of 13133, R. S. Mo. 1939, supra, the sheriff may, with the approbation of the circuit court, appoint one or more deputies for civil duties but that deputies appointed under the authority of this section would be allowed no salary and must look to the sheriff for their compensation.

Under the provisions of Section 13399, supra, the constable received the sum of \$3.00 per day or part thereof for the performance of election duties in his township and it is noted that the fee was for services rendered in but one township of the county in which the constable resided. Under the provisions of the present law the sheriff is now required to perform the election duties formerly performed by the constable but in each and every township of the sheriff's county. Since such duties are civil in nature, the sheriff would be entitled to a fee of \$3.00 per township for each day or part of day in which said services were performed. The deputies who assist him in such performance would receive no part of said fee but will receive only such compensation as is paid to them by the sheriff.

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In answer to your second inquiry, it follows that in view of the foregoing reasons the circuit judge has no authority to fix the compensation of deputies appointed to assist the sheriff in the performance of his election duties in connection with "state-wide" or "county-wide" elections held in your county. That such duties are civil in nature and the sheriff must compensate his deputies for services rendered in connection with said elections.

Your third inquiry is whether or not the sheriff is entitled to be reimbursed out of the county treasury for compensation paid by him to his deputies appointed to assist him in the performance of his election duties in a "state-wide" or "county-wide" election, and bearing in mind the previous opinion of this office that deputies appointed for election duties are to look to the sheriff for their compensation.

In discussing this inquiry we desire to call attention to the following cases which state the general rule now prevailing in Missouri with reference to the payment to an officer of compensation for his services or that of his assistants.

In the case of Nodaway County vs. Kidder, 129 S.W. (2d) 1.c. 860, the court said:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. If the statute provides compensation in a particular mode or manner, then the officer is confined to that manner and is entitled to no other or further compensation or to any different mode of securing same. Such statutes, too must be strictly construed as against the officer. * * *

"It is well established that a public officer claiming compensation for official duties performed must point out the statute authorizing such payment.
* * *"

Also in the case of Alexander vs. Stoddard County, 210 S.W. (2d) 108, it was held to be the general rule that compensation for services rendered by assistants, deputies and other employees of county officials can be allowed directly to them or their superiors only if authorized by law, and where no provision is made for payment, or appointment or employment of deputies and assistants, the latter must look exclusively to their employers for compensation, and such employer cannot look to the county for reimbursement.

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Applying the principles laid down in above cases to the question before us, it appears that if your sheriff is to be reimbursed for compensation paid deputies for assistance in elections, it is the duty of the sheriff to show those statutes authorizing him to be reimbursed at the expense of his county. It is also noted in this connection that any such statutes that might be cited by the sheriff to sustain his contention will be strictly construed against him, and that in the absence of such a showing the sheriff claiming fees not authorized by statute will be deemed to have performed them gratuitously.

There being no statutory provisions that authorize the county to reimburse the sheriff for expenditures of this nature, the sheriff is not entitled to be reimbursed by the county.

In answer to Question Number 4, in view of what has been said above, neither the Township Board nor the County Treasurer have any legal authority and cannot reimburse the sheriff of your county for money paid to his deputies for services in connection with elections held in your county. The sheriff and not the circuit court fixes and is liable for compensation of the deputies for such services.

In answer to your last inquiry, it appears that since there is no statute which provides that the sheriff shall be allowed fees and mileage expenses incurred in notifying deputies appointed to assist the sheriff in the performance of election duties, that the sheriff is not entitled to such fees or mileage.

CONCLUSION

It is therefore the opinion of this department that a sheriff of a third class county may appoint with the approbation of the circuit court such deputies as may be necessary to enable him to properly perform election duties now enjoined on him by law at every election held in his county. That such deputies are not entitled to any salary and the circuit court is not authorized to fix their compensation. That the sheriff is not entitled to be reimbursed at the expense of the county for money paid by him as compensation to his deputies for their assistance in performing the election duties, and that the sheriff is also not entitled to be reimbursed for any traveling expenses incurred by him while notifying those deputies appointed to assist him in his election duties.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR,
ATTORNEY GENERAL

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