

SALARIES AND FEES:-Foreclosure of School Fund mortgage by sheriff,
fees same as upon execution.

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Dec 11789 RS Mo 1929

December 27, 1933.

12-30 ✓
FILED

Mr. John B. Brooks,
Presiding Judge County Court,
Trenton, Missouri.

Dear Sir:

We are acknowledging receipt of your letter in which you inquire as follows:

"The County has some money loaned out of the School Fund that we expect to foreclose. We want to know what the Sheriff's commission would be on these sales.

For example, if our loan amounted to \$1000.00 and we bought it in for \$1100.00, what would the Sheriff's commission be?

Also, if a sale of property is ordered and publication made, and then sale ordered stopped by the Court, can the Sheriff collect commission on sale not made. If you will give us this information we will appreciate it."

In Jackson County v. Stone, 168 Mo. 577, it was held that a sale under a School Fund mortgage by the Sheriff is not a sale under a "mortgage with power of sale," and that the Sheriff's fees for such services are the same as he is entitled to on money received on execution. The Court at page 582 says:

"In this case the defendant as sheriff, in the discharge of his official duty as such, levied on, advertised and sold the mortgaged land, on a duly certified copy of the order of the county court, which the statute declares 'shall have the effect of a fieri facias on a judgment of foreclosure by the circuit court, 'the execution to be issued shall be a special fieri facias, in accordance with the judgment, and shall be executed and returned as executions in ordinary civil suits.' * * * It necessarily follows from what has been said that no part of such amount was received by the defendant 'as commission for acting as trustee in a deed of trust or mortgage with power of sale' within the meaning of said section * * *."

Section 11789, R. S. Mo. 1929, fixes the fees allowed to

the Sheriff for his services, and among other things provides as follows:

"* * * For commission for receiving and paying moneys on execution or other process, where lands or goods have been levied and advertised and sold, three per cent on five hundred dollars and two per cent on all sums above five hundred dollars, and half of these sums, when the money is paid to the sheriff without a levy, or where the lands or goods levied on shall not be sold and the money is paid to the sheriff or person entitled thereto, his agent or attorney."

In Miller v. Muegge, 27 Mo. App. 670, 675, it is said:

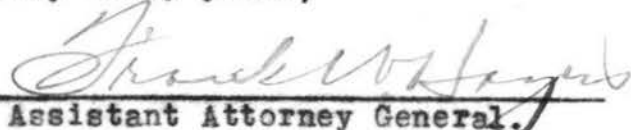
"But the sheriff, as already stated, is entitled to a commission on the sum of money which he received and paid over."

If the County Court forecloses a county school fund mortgage and the land sold for the sum of \$1100.00, the Sheriff would be entitled to a commission of 3% on the first \$500.00, which would be \$15.00, and a commission of 2% on the remaining \$600.00, which would be \$12.00, or a total commission of \$27.00.

If, after the sale of property is ordered and publication made and the sale stopped and the money is paid over to the Sheriff, or to the county and not to the Sheriff, the Sheriff, under the foregoing section, is entitled to one-half of the commission above set out. In other words, after the sale had been ordered and publication made and the loan of \$1000.00 was paid off and the sale stopped, then the Sheriff would be entitled to the commission of one and one-half per cent on the first \$500.00, which would be \$7.50, and one per cent on the second \$500.00, which would be \$5.00, or a total of \$12.50.

It is therefore our opinion that the Sheriff is entitled to a commission of 3% on the first \$500.00 and 2% on sums over \$500.00 on money collected by reason of the foreclosure, and if, after sale is ordered and publication made, the sale is stopped and the loan is paid off, then he is entitled to a commission on the money received by the county under the mortgage, at the rate of one and one-half per cent on the first \$500.00 and one per cent on all over \$500.00.

Very truly yours,


Assistant Attorney General.

APPROVED:

Attorney General.