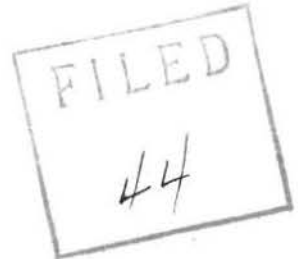


January 25, 1933



Hon. David E. Impey
Prosecuting Attorney
Houston, Missouri

Dear Sir:

Your letter of January 14, 1933 addressed to the Attorney General has been handed the undersigned for attention. In your letter you recite the following facts:

"Texas County by the census of 1930 had a population of 18,580.

"Is the Sheriff entitled to charge and collect his per diem of three dollars for attendance upon courts of record for each day that the Probate Court and the County Court are in session, if the Sheriff is not (in person or by deputy) in actual attendance?"

"Since the statute makes it part of his duty to attend, I take it the presumption is that he did his duty and the burden would rest upon the county to show that he was not in attendance.

"May the Probate Court and the County Court by order direct that the Sheriff not attend and thus relieve the county from the payment of the per diem, or has the Sheriff the right in the face of such an order to actually attend (in person or by deputy) and insist upon his right to three dollars per diem for such attendance?"

The law of this state imposes a duty upon the Sheriffs in the counties of this State. Section 1870, R.S. Mo. 1929, provides:

"The several sheriffs shall attend the courts held in their counties except where it shall be otherwise directed by law. *** "

Section 11789, R.S. Mo. 1929, provides for the fee of sheriffs and among fees provided for therein is the following:

" *** For attendance each court of record or criminal court, and for each deputy actually employed

in attendance upon such courts, the number of such deputies not to exceed three per day, \$3.00. *** "

This section further provides that:

"In all counties of this state, which now have or may hereafter have a population of more than 50,000 inhabitants, and less than 125,000, the sheriff shall not be allowed the fee of \$3.00 for himself or deputies for attendance, on the county or probate court, except for such days as such court shall by an order request such attendance."

It will be observed that the latter part of this Section only applies to counties having a population of more than 50,000.

Section 1870 is a part of Chapter 9, Article 1 of the Statute, designated, "Courts of Record ". The County and Probate Courts are Courts of record, and therefore referred to in Section 1870 by the language each court.

The Sheriff, having the duty imposed upon him by the Statute as aforesaid, to attend each court and there being no statutory enactment relieving him from such duty, in counties of less than 50,000 in population, it is the opinion of this department that the Sheriff would be entitled to his fees for such service.

If the Sheriff was derelict in his duty and wilfully failed or neglected to perform the services required of him by law, he could and should be proceeded against for a neglect of his official duty. In that event, we seriously doubt his ability to recover when not in actual attendance upon the court.

The Legislature has prescribed the duty of the Sheriff as above set forth, and only through an act of the Legislature could such duty be modified or changed. In our opinion, your County Court would be without authority to order the services of the Sheriff with respect to his duties of attending the Courts of record in your county, discontinued.

Yours very truly,

CARL C. ABINGTON
Assistant Attorney-General

CCA:ER

Approved _____
Attorney General