Probate Judge:

1. Sheriff must be and remain in attendance upon the Probate Court when the same is in session.

2. The Probate Court has no power to appoint a bailiff as an officer of the Court to keep order, summon witnesses, etc.

June 20, 1934.

FILED 65

Hon. D. F. Warren,
Judge of Probate,
Trenton, Missouri.

Dear Sir:-

We have your letter of October 13, 1933, in which is contained a request for an opinion as follows:

> "I want to get the opinion of your office about what is meant by the fee allowed the Sheriff for attendance in this Court. It has for many years been a practice here for the Sheriff to come and open the Probate Court and then go on about his business and no more is heard about him or his deputies during the entire day and he turns in a bill to the County Court for $3.00 on each of those days. The sum total amounts to a good deal in the run of a year and in these times when the tax payers are watching all expenditures, the result is that I am not in session as many days as I would otherwise be on account of this $3.00 charge.
>
> "What I want to know is whether or not you think that he is entitled to this $3.00 for merely opening court.
>
> "Also I would like to know if it would be possible for this Court to appoint a Bailiff, someone who would act as an officer of the Court and would be present all of the time to keep order, summons witnesses or juries and carry out the orders of the Court. I am sure that I could at this time get someone to act in this capacity for in the neighborhood of $1.00 a day and that would result in a saving to the tax payers and make it much more convenient for this court.
>
> "If you rule that I have that authority I wish you would cite me the law and write up a form for an order for me to spread upon my records concerning the appointment of this bailiff, and advise if he should take an oath and, if so, give form of oath."

The fee to which a sheriff shall be entitled for attending a court of record is set by Section 11789, Revised Statutes of Missouri, 1929, at three dollars. The probate court is by Article VI, Section 34

of the Constitution of Missouri, and by Section 2045, Revised Statutes of Missouri, 1929, declared to be a court of record, hence the sheriff is certainly entitled to the above mentioned fee for attending the said court.

The question then arises whether the sheriff is fulfilling his duty by merely opening the court and not remaining further.

Section 11518, Revised Statutes of Missouri, 1929, provides in part as follows:

> "Sec. 11518. Duties generally.--Every sheriff shall quell and suppress assaults and batteries, riots, routs, affrays and insurrections; shall apprehend and commit to jail all felons and traitors, and execute all process directed to him by legal authority, including writs of replevin, attachments and final process issued by justices of the peace; and he shall attend upon all courts of record at every term, * * *". (Underlining ours.)

Section 1870, Revised Statutes of Missouri, 1929, provides as follows:

> "Sec. 1870. Duties of Sheriffs.--The several sheriffs shall attend each court held in their counties, except where it shall otherwise be directed by law; and it shall be the duty of the officer attending any court to furnish stationery, fuel, and other things necessary for the use of the court whenever ordered by the court."

In the case of State v. Yager, 250 Mo. 388, the Supreme Court of Missouri, through Faris, J., stated at page 403 as follows:

> "The defendant was the sheriff of Pike County. It was his duty under the law to be and remain in attendance upon the circuit court of his county when the same was in session (Sec. 11212, R. S. 1909), unless by other pressing official duties, or by illness, or some other lawful reason he was prevented therefrom."

The Section 11212, R. S. 1909 referred to therein is the same section as section 11518, Revised Statutes of Missouri, 1929, quoted earlier in this opinion. In the case of State v. Yager, quoted from above, the question of the attendance of the sheriff in the Circuit Court was at issue but the rule laid down readily applies to a Probate Court since the latter is just as much a court of record as the former.

In view, therefore, of the statutory sections and the decision above referred to we are of the opinion that the sheriff should attend the full session of the court and carry out the orders of the court as provided in said statutory sections.

There being no statutory authority for the appointment of a bailiff by the court we are constrained to say that such appointment can not legally be made.

Trusting we have answered your questions to your satisfaction, we ~~reamin~~ remain

Very truly yours,

CHAS. M. HOWELL, Jr.
Assistant Attorney General

CMHJr:LC

Approved:

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Attorney General.