

SHERIFFS' FEES - Howard County controversy.

6-28

June 27, 1935.

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Honorable C. R. Biswell
Presiding Judge of County Court
Howard County
Fayette, Missouri

Dear Sir:

We have your request for an opinion, accompanied by a brief statement of facts as to certain charges and fees claimed by the sheriff of Howard County. We shall treat these items separately.

I.

" Drawing petit Jury April 1933, 24 regular jurors.	
Drawing petit Jurors August 1933, 24 regular jurors.	
Drawing petit Jurors Dec. 1933, 24 regular jurors.	
Drawing petit Jury April, 1934 24 regular jurors.	
Drawing petit Jury, August, 1934, 24 regular jurors.	
Drawing petit Jurors December 1934, 24 regular jurors.	
Drawing petit Jurors March 1935, 24 regular jurors.	
at \$8.40 times 7 equals	\$58.80
200 Mil. .10 times 7 equals.	140.00

\$198.80 "

From the statement of facts, these services were performed by the sheriff. Such fees are allowed under and by virtue of Section 11789, R. S. Mo. 1929.

We are enclosing a copy of an opinion relative to that matter, which will be found under point I in an opinion of this office under date of February 4, 1935.

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II.

The second matter presented for consideration is as follows:

"Special Repeal Election (wet & dry) Aug. 19, 1933,
Special Bond Issue Election, May 15, 1934,
August Primary Election, Aug. 7, 1934,
General Election, Nov. 6, 1934.

Notifying judges of the above 4 elections at \$.50 each 92 in each election, would be the same as notifying 368 judges, equals \$184.00

Mileage, 135 miles at \$.10 times 4 would equal 54.00

19 Precincts at \$3.00 each would equal \$57.00 and, 4 elections times \$57.00 would equal \$228.00, but I was paid \$50.80 mileage, which would leave 177.20

Total amount due under (II) \$415.20 "

It appears from the brief statement of facts that the sheriff did not perform the services in notifying the judges of election, but did perform the services of delivering the ballots to the judges of election.

We are enclosing a copy of an opinion of this office written by Mr. Drake Watson under date of June 8, 1935 relative to the duty of the county court to audit and correct accounts before paying, which opinion in substance holds that the sheriff is not entitled to any fees for services not rendered. This opinion therefore disposes of the claim of \$184.00 and mileage amounting to \$54.00 for notifying judges of election. This claim is not payable because the services were not rendered.

Relative to the claim for delivering ballots to the judges of election, all of which services appear to

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have been performed, we note that the sheriff's claims total \$228.00, and the county court has paid the total of \$50.80, leaving a claimed balance of \$177.20. In this connection, we refer you to part IV of an opinion of this office under date of February 4, 1935, which is enclosed herewith, and which opinion holds that the sheriff is entitled to reasonable compensation for such services under and by virtue of Section 10305, R. S. Mo. 1929. As to what constitutes a reasonable fee for the services rendered, we are unable to determine. That is a matter of fact for the county court to decide. All questions of fact are for the county court, and the Attorney General's office is without authority to enter into controversial matters and decide questions of fact. 6 C.J., Section 16, p. 811.

It is, therefore, the opinion of this office that the sheriff is entitled to reasonable compensation for delivering ballots; said compensation to be fixed by the county court in its judgment.

III.

The third and remaining portion of your request for an opinion is as follows:

"112 Miles at \$.10 a mile equals	\$11.00
Deputy Hire for each	4.00
Custody charge allowed	1.00

Total amount allowed for each patient. \$16.20

15 patients times \$16.20 would equal . 243.00
or the total amount due. "

We understand from the agreed statement of facts that the sheriff was not allowed to take the fifteen patients to the insane hospital at Fulton and that no part of said services were performed by the sheriff. It appears that

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two of the patients were taken by relatives, but it does not appear who took the other thirteen, except that the sheriff did not. We enclose herewith copy of an opinion under date of February 16, 1935 which in substance holds that insane persons sent by the county court to a state hospital are to be taken under and by virtue of a warrant, as provided in Section 8649, R. S. No. 1929, and which opinion further holds that if relatives do not take the patient to the hospital, it is the duty of the sheriff to convey such persons to the state hospital, and that the compensation fixed by Section 8662, Laws Mo. 1933, page 409, is payable to either the sheriff or relatives.

It is, therefore, the opinion of this office that the sheriff is not entitled to the fees claimed in point III of this opinion for the reason that the services were not performed.

In the preparation of this opinion, we have assumed the facts stated in the request to be true, as the same appeared to be an agreed statement of facts signed by both the sheriff and the prosecuting attorney of Howard County. We have not touched upon the right of the sheriff, at the proper time, to have, by proper court procedure, the county compelled to allow him to perform duties which were herein denied to him. Neither do we pass upon the question of whether the county is entitled to recover fees paid to persons other than the sheriff or relatives for the transportation of patients to state hospitals.

Respectfully submitted,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney General

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