

SHERIFFS - Duties to attend court - compensation.

November 15, 1935

11-16

See # 76-1235
to [unclear]

FILED
14

Honorable T. O. Carver
Prosecuting Attorney
Pulaski County
Waynesville, Missouri

Dear Sir:

We have your request of November 9, 1935 for an opinion, as follows:

"A controversy has arisen between the Sheriff and County Court about as follows: The Sheriff very seldom, if ever, is at his office or where he can be found to take care of the general run of business or duties of the Sheriff's Office. The County Court has refused to pay him his per diem charge for waiting on the County Court and Probate Court, except for the opening day, for the reason that the Sheriff is never present and does nothing to earn the money and the Court contends that they do not need his services even if he was present and that they have the power or option to determine whether or not he is needed and whether or not he should be paid when not needed and when not present.

"Will you kindly furnish me with an opinion as to whether

#2 - Honorable T. O. Carver

the County Court is acting within its rights and powers in refusing to pay the Sheriff as outlined above."

In answer to your inquiry, we quote Section 1870, R. S. Mo. 1929:

"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."

The statute which defines the duties of the sheriffs generally is Section 11518, R. S. Mo. 1929, which, among other things, provides:

"Every sheriff * shall attend upon all courts of record at every term * "

A county court is a court of record. Article VI, Section 36, Mo. Constitution. It would therefore appear that it is the duty of the sheriff to attend the daily sessions of all courts of record in his county. We construe the above statute to be mandatory upon the sheriff, and in State v. Yager, 250 Mo. 388, (1913), Division 2 of the Supreme Court held that such duties were mandatory upon the sheriff and that his failure to attend sessions of court was ground for removal.

Under the provisions of Section 1871, R. S. Mo. 1929, it is provided:

#3 - Honorable T. O. Carver

"The court shall audit and adjust the accounts of the officer attending it, made pursuant to this chapter, and certify the same for payment."

The rate of compensation of sheriffs is provided by Section 11789, R. S. Mo. 1929 as follows:

"For attending each court of record
* * per day. \$3.00 "

From the above and foregoing, it is apparent that the sheriff must attend each session of court of the county court, for which he is entitled to pay at the rate of \$3.00 per day. This pay is for actual attendance upon such court, and it is the duty of the county court to audit and pay the statutory fee for such services of the sheriff in attending court.

It is, therefore, the opinion of this office that it is the duty of the sheriff to attend the county court each day it is in session; that this duty is by law imposed upon the sheriff, and does not depend upon the will or wish of the county court in the matter. The sheriff is not entitled to such compensation for such services unless he actually attends court, since the power of the county court to audit and pay such claims is limited to pay for actual attendance at said court.

Yours very truly,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

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