

SHERIFFS--PROBATE COURTS--JURORS:

Duty of Sheriff to attend Probate Court and certain fees payable to the Sheriff and Jurors for services rendered.

8.14  
August 12, 1935.



Honorable Elliott M. Dampf  
Prosecuting Attorney  
Cole County  
Jefferson City, Missouri

Dear Sir:

Your request for an opinion dated July 29th, is as follows:

"Will you please furnish this office with an opinion as to what pay a juror is entitled in serving on a jury in the Probate Court either in a hearing on a demand or an insanity case.

"Will you also furnish an opinion on the fees allowed the Sheriff for serving jurors in the Probate Court; also for opening Probate Court.

"Please bear in mind that although Probate Court has a regular term, it does not have a regular jury. The juries are selected as needed. The regular term of the Probate Court begins on the second Monday of February, May, August and November, and as a rule, run for fifteen or twenty days. Is the Sheriff entitled to pay for opening Court each day during the regular term, if so, how much?

The Probate Court in Missouri is a Court of Record, for Section 2045, R. S. Mo. 1929, provides:

"A probate court, which shall be a court of record, and consists of one judge, is hereby established in the city of St. Louis, and in every county in this state."

Where a demand in Probate Court is being pressed against an estate for allowances, it is within the power of either party to demand a jury trial for Section 200 R. S. Mo. 1929, provides:

"If the demand or set-off do not exceed twenty dollars, or if neither party require a jury, the court may decide on the validity of such demand."

Section 201, R. S. Mo. 1929, also provides:

"If the demand or set-off exceed twenty dollars, and either party require a jury, one shall be immediately summoned, and the trial shall be conducted in a summary manner, without form of pleading."

The Probate Court has power to order the sheriff to summons a jury, for Section 8772 R. S. Mo. 1929, provides:

"All courts, other than those heretofore named, in which juries may be required for the trial of any cause, may order the sheriff or other proper officer to summon a sufficient number of jurors as occasion may require."

We fail to find any Statute making it the sheriff's duty to open Probate Court. You state that there are four terms of Probate Court in each year, and it is the statutory duty of the sheriff to act in attendance, open all Courts of Record at every term thereof. Section 11518 R. S. Mo. 1929, provides in part as follows:

"\* \* \* he shall attend upon all courts of record at every term, \* \* \*."

Again in Section 1870 R. S. Mo. 1929, the Legislature provided:

"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."

Where a sanity hearing in Probate Court is being conducted, it is the duty of the Probate Court to order a jury when requested, and Section 448 R. S. Mo. 1929, provides:

"If information in writing, verified by the informant on his best information and belief, be given to the Probate court that any person in its county is an idiot, lunatic or person of unsound mind, and incapable of managing his affairs, and praying that an inquiry thereinto be had, the court, if satisfied there is good cause for the exercise of its jurisdiction, shall cause the facts to be inquired into by a jury; Provided, that if neither the party giving the information in writing, nor the party whose sanity is being inquired into call for or demand a jury, then the facts may be inquired into by the court sitting as a jury."

In the case of Gammon v. Lafayette County, 76 Mo. 675, 1. c. 676, the Supreme Court said:

"The right of a public officer to fees is derived from the statute. He is entitled to no fees for services he may perform, as such officer, unless the statute gives it. When the statute fails to provide a fee for service he is required to perform as a public officer, he has no claim upon the State for compensation for such service."

The sheriff's fees for attending at every term of Probate Court, pursuant to the law requiring him to attend, are found in Section 11789 R. S. Mo. 1929, which provides in part:

"For attending each court of record or criminal court and for each deputy actually employed in attendance upon such court the number of such deputies not to exceed three per day. . . . . \$3.00."

The jurors' fees for serving on a jury in Probate Court is found in Section 11797 R. S. Mo. 1929, which provides in part:

"For each person summoned, attending and reporting to any court of record, per day, except as otherwise provided by law. . . . . \$1.00."

The Sheriff's fee for summoning a jury in Probate Court is found in Section 11789 R. S. Mo. 1929, which provided in part:

"For summoning a standing jury. . \$8.40."

CONCLUSION.

The Probate Court in Missouri is a Court of Record with jurisdiction over Jury Trials in demand cases and in insanity hearings. The parties have a statutory right to present their cause to a jury. It is the Sheriff's duty to summons a jury when ordered by the Court, and to attend at each term of Probate Court and also to execute all orders of said Court except where the Statutes have directed otherwise. Those who render statutory service to the Probate Court, such as serving on a jury, serving the summons on prospective jurors, attending the terms of Court and executing the orders of the Court are duty bound to perform their statutory services. For their services they are entitled only to such fees as the Legislature has provided.

Any person summoned attending and reporting for jury service in Probate Court is entitled to the per diem fee of \$1.00.

The sheriff's fees for attending each term of Probate Court is \$3.00 per day for every day his attendance is re-

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quired and service rendered. We cannot find where the Legislature has provided the sheriff a fee for opening Probate Court, as stated in your request.

The sheriff's fee for summoning a standing jury in Probate Court is \$8.40.

Respectfully submitted

WM. ORR SAWYER  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK  
Attorney General.

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