

COUNTY COURT--SHERIFFS: In Counties of less than 75,000 inhabitants, County Judges are entitled to \$5.00 per day when necessarily engaged in holding Court. There is no statutory or common law duty in Missouri for a sheriff to open Court, but his duty is to attend Court.

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Honorable C. W. Piper
Clerk of the County Court
Saline County
Marshall, Missouri

Dear Sir:

We acknowledge your request for an opinion dated September 21, 1935, which reads as follows:

"We are wishing to have your opinion in regard to duties of the Sheriff of the several Counties of Missouri.

"1. Is it compulsory for the Sheriff to open the County Court each day that the County Court meets for that body to be in an official session, or is it only necessary for the Sheriff to open the County Court four (4) times a year, the beginning of each term of Court?

"2. If the County Court goes as a body into the Country to view roads and bridges, is it necessary for the Sheriff to open the County Court in order for the County Court to receive their pay for that day when no work of record has been transacted, or is it only necessary for the Clerk to make an entry on the County Court record to that effect?

"We are very anxious for your opinion on this matter, and would be very grateful for an early reply."

It is the mandatory statutory duty of the sheriff to act in attendance upon the County Court at every term. Section 11518 R. S. Mo. 1929, provides in part:

"* * * *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."

County Judges are constitution officers with constitutional duties to perform, and Article VI, Section 36, Missouri Constitution provides:

"In each county there shall be a county court, which shall be a court of record, and shall have jurisdiction to transact all county and such other business as may be prescribed by law. The court shall consist of one or more judges, not exceeding three, of whom the probate judge may be one, as may be provided by law."

Section 2077 R. S. Mo. 1929 provides:

"The said court shall, when not otherwise provided by law, have power to award process and to cause to come before them all and every person whom they may deem it necessary to examine, whether parties or witnesses, and may examine every person on oath or affirmation, touching any matter in controversy before them."

The Legislature has provided for the terms of the County in Section 2083 R. S. Mo. 1929, which reads:

"Four terms of the county court shall be held in each county an-

nually, at the place of holding courts therein, commencing on the first Mondays in February, May, August and November. The county courts may alter the times for holding their stated terms, giving notice thereof in such a manner as to them shall seem expedient: Provided, that in counties now containing or that may hereafter contain seventy-five thousand or more inhabitants, and where county courts are now or may hereafter be held at more places than one and at other places than the county seat, the terms of said court shall be held monthly and alternately at the county seat and such other places as may be provided for the holding of such court, and each monthly term shall commence on the first Monday of each month."

Section 2691 R. S. Mo. 1929 provides the statutory method whereby a County Court can do County business and reads:

"A majority of the judges of the county court shall constitute a quorum to do business; a single member may adjourn from day to day, and require the attendance of those absent, and when but two judges are sitting and they shall disagree in any matter submitted to them, the decision of the presiding judge at the time being, to be designated by the clerk of such court, shall stand as the judgment of the court."

In the case of Gammon v. Lafayette County, 76 Mo. 675, l. 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.

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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."

County Judges in Saline County receive their compensation as provided for Counties under 75,000 population, and Section 2092 R. S. Mo. 1929, as amended in the Laws of 1931, page 191, read in part:

"* * * * In all counties of this state now or hereafter having less than seventy-five thousand inhabitants, the judges of the county court shall receive for their services the sum of five dollars per day for each day necessarily engaged in holding court. In addition to the salaries herein authorized to be paid to judges of the county court in counties having seventy-five thousand inhabitants or more, and in addition to the per diem herein authorized to be paid to the judges of the county court in counties having less than seventy-five thousand inhabitants, said judges shall receive five cents per mile for each mile necessarily traveled in going to and returning from the place of holding county court, provided that such mileage shall be charged only once for each regular term."

15 Corpus Juris, page 881, Section 231, paragraph 2, provides:

"Where the time of beginning but not of ending a term is fixed, the term, when it has been duly begun, will continue, and may for all general purposes be considered as in session, until it has been determined by some affirmative judicial act, such as an adjournment sine die, or

until the next term; and after the term of a court has been opened, the questions how long it shall remain open, to what day it shall be adjourned, and whether and how often it shall remain open for incidental business after the regular business of the term has been concluded are matters which rest in the discretion of the judge, the general rule being that the term should or may be continued until all the business before the court is disposed of."

In the case of Lewis v. Hoboken 42 N. J. L. 377, that Court said at l. c. 379:

"The relator's theory is that the court is always open, and that there is each day a constructive sitting of the court, at its usual meeting place, where he may attend, and for each day of such attendance, claim pay.

"The defendant thought that he should be paid only when he was serving the court at an actual session.

"This latter view seems to me to be the correct one, and to be rested upon the only interpretation which the words used in the act will admit of. 'Attendance upon the sittings of the court,' is the condition of payment.

"A court is defined by Bacon (Bac. Abr., tit. 'Court,' A,) to be 'an incorporeal political being, which requires for its existence the presence of its judges, or a competent number of them, and a clerk or prothonotary, at or during which, and at a place where it is, by law,

authorized to be held, and the performance of some public act indicative of the design to perform the functions of a court.' "

CONCLUSION.

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As per the Missouri Constitution, the County Courts of the several Counties in Missouri are Courts of Record "with jurisdiction to transact all County business as may be prescribed by law." According to Section 2077, supra, they have power to award process touching any matter in controversy before them. According to Sections 11518 and 1870, supra, it is the sheriff's duty to attend the County Court at every term, and to attend all process issued out of the County Court, except where the attention of process is directed otherwise by the Legislature. The Legislature has provided fees incidental to the performance of certain duties in the office of sheriff, including fees for attending the County Court and fees for the attention of process issued out of the County Court, but in our search we find no Statute specifically directing the sheriff at any time to "open Court", nor is there a statutory fee allowed for "opening Court." Is it to be said that because the Legislature said that he must attend each term of the County Court, and that he must attend all process issued out of the County Court, it is necessarily implied from this statutory duty that he has the implied duty to "open Court?" We think not. Where the sheriff opens the County Court, as is practiced in many courts in Missouri, he does so either under the rule of the Court or by sufferance of the Court. The common law and Statutes of Missouri are silent on the matter of a sheriff opening the County Court.

Once the statutory term is in session it continues in session at the discretion of the Court until all business before the Court is disposed of. It is common knowledge that a term of Court may in fact consist of many days, but by legal fiction it is deemed to consist of but one day, the day upon which it is first held, with the sheriff in formal attendance. Once Court is in session, at no place in the law is a sheriff empowered

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to assume that the County Court closes from day to day with a new opening on each succeeding day. All succeeding days of Court are in contemplation of the law only a part and continuance of the first day.

The County Judges are constitutional officers charged with administering the affairs of the County, and many of their functions are other than judicial, and do not necessitate the presence of a sheriff. It becomes their duty to view roads and bridges when occasion demands. It is their duty to see and know where County money is being spent, or expected to be spent. Nothing in the Statutes compel them to hold Court in the Court House. The Statutes say that once the term of Court is legally in session the majority of the judges shall constitute a quorum to do County business, as long as the term is not determined by some affirmative judicial act or by operation of the law.

We are of the opinion that during statutory term time, but not during judicial adjournment, they can meet at any public place within the County where the occasion, in their discretion, demands their presence, and a quorum of said Court can then and there necessarily hold court and do business for the County, for which service they are entitled to per diem compensation. The Sheriff need not be physically present after his attendance on the first day of the term. During term time, if the Court needs him for any official service, it is within their power to send for him.

The Legislature has said that the County Court of Saline County shall receive "\$5.00 for each day necessarily engaged in holding Court", and it further says that each term they "shall receive five cents per mile for each mile necessarily traveled in going and returning from the place of holding Court."

Respectfully submitted

APPROVED:

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