

SHERIFFS - Fees for attending court.

1-14
January 8, 1935.



Honorable Forrest Smith
State Auditor
Jefferson City, Missouri

Dear Sir:

Your request of December 19, 1934 for
an opinion is as follows:

"Section 1870, R. S. Mo. 1929
provides certain duties affect-
ing the office of Sheriff.

"I would like an opinion as to
whether a Sheriff is entitled
to \$3.00 a day for waiting upon
the County Court and the Probate
Court when he actually does not
perform the duties as such."

It appears from the statute, Section 1870,
R. S. Mo. 1929, that:

"The several sheriffs shall at-
tend each court held in their
counties, except where it shall
otherwise be directed by law; ** "

We construe the above statute to be mandatory
upon the sheriff; it is, however, silent as to any depu-
ty. Section 1871, R. S. Mo. 1929 makes it the duty of
the county court to:

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

Construing the two above statutes together, it is plain, (1) that it is the mandatory duty of the sheriff to attend each court held in his county, and, (2) that the account of the sheriff shall only be paid for such days as he actually attends court. The rate of pay for such service is fixed by Section 11789, R. S. Mo. 1929 and is in the following language:

"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"

Construing the above three statutes together, it is plain that it is the duty of the sheriff to attend court, and the rate of pay is for actual attendance upon such court, and it is the duty of the county court to audit and pay such accounts only for the officer attending court. In the event that the sheriff is unable to attend court, a deputy may attend in his place. The number of deputies in attendance upon the court under the above statute should be fixed by the court being attended.

It is, therefore, the opinion of this office that it is the duty of the sheriff to attend each term of court held in his county and for such attendance he is entitled to the statutory fee of \$3.00. If he fails to attend court, he is not entitled to such pay, since the statutory fee allowance is based upon the actual attendance, and the power of the county court to audit and pay such claims is limited to pay for actual attendance of such court.

Yours very truly.

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

PER:FE