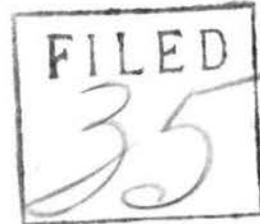


SHERIFFS - A sheriff may receive only a reasonable compensation for caring for a jury, not to exceed \$2.00 per day for each juryman and the officer in charge.

May 29, 1936

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Honorable Percy W. Gullic
Prosecuting Attorney
Oregon County
Alton, Missouri

Dear Sir:

This will acknowledge receipt of your request of May 18, 1936 for an opinion, which reads as follows:

"Would you please inform me as to what the Sheriff is allowed under the law for taking care of a jury.

"Is the Sheriff allowed the full \$26.00 per day for caring for a jury, or is he just allowed what it actually costs to keep them up to that amount?"

We point to the applicable statutes with reference to the question presented by your request.

Under the provisions of Section 3826, R. S. Mo. 1929 relating to the duty of the sheriff to supply jury-men with board and lodging, it provides in part as follows:

" ** when the jury are not permitted to separate, it shall be the duty of the sheriff in charge of the jury, unless otherwise ordered by the court, to supply them with board and lodging during the time they are required by the court to be kept together, for which a reasonable compensation may be allowed, not to exceed two dollars per day for each juryman and the officer in charge;
** "

The above quoted portion of the section of the statute contemplates that only a reasonable compensation may be allowed in caring for jurymen who are not permitted to separate, and that such compensation shall not exceed \$2.00 per day for each jurymen and the officer in charge. The statute in nowise provides that a full \$26.00 per day shall be allowed for the caring for a jury. The inhibition expressed is that such compensation shall not exceed two dollars per day.

Under the provisions of Section 3841, R. S. Mo. 1929, relating to the clerk's duty to make out the fee bill in any criminal causes, it is stated:

"The clerk of the court in which any criminal cause shall have been determined or continued generally shall, immediately after the adjournment of the court and before the next succeeding term, tax all costs which have accrued in the case; and if the state or county shall be liable under the provisions of this article for such costs or any part thereof, he shall make out and deliver forthwith to the prosecuting attorney of said county a complete fee bill, specifying each item of services and the fee therefor."

Section 3842, R. S. Mo. 1929, relating to the duty of the prosecuting attorney and judge with respect to fee bills in criminal causes, provides as follows:

"It shall be the duty of the prosecuting attorney to strictly examine each bill of costs which shall be delivered to him, as provided in the next preceding section, for allowance against the state or county, and ascertain as far as possible whether the services have been rendered for which charges are made, and whether the fees charged are expressly given by law for such services, or whether greater charges

are made than the law authorizes, and if said fee bill has been made out according to law, or if not, after correcting all errors therein, he shall report the same to the judge of said court, either in term or in vacation, and if the same appears to be formal and correct, the judge and prosecuting attorney shall certify to the state auditor, or clerk of the county court, accordingly as the state or county is liable, the amount of costs due by the state or county on the said fee bill, and deliver the same to the clerk who made it out, to be collected without delay, and paid over to those entitled to the fees allowed."

You will note from the above quoted sections of the statute that it becomes the duty of the Prosecuting Attorney to "strictly examine each bill of costs which shall be delivered to him", and whether or not the services have been rendered for which charges are made. It becomes the further duty of the Prosecuting Attorney to present such fee bill to the judge, either in term time or in vacation, who shall subsequently certify the same to the State Auditor.

There would be no reason to assume that under the above provisions set forth that a sheriff should be allowed a full amount as indicated by Section 3826, as the limitation expressly provides that the reasonable compensation shall not exceed \$2.00 per day for each jurymen and the officer in charge.

CONCLUSION.

In light of the above, it is the opinion of this department that a sheriff may only receive for the caring for the jury what such sheriff has actually expended, as

Hon. Percy W. Gullie

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May 29, 1936

being reasonable compensation, not to exceed \$2.00
per day per juryman and officer in charge.

Very truly yours,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

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

RCS:FE