

CONSTABLES: Fees of a constable and deputies for attending election and erecting and tearing down election booths

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Mr. Lewis B. Hoff
Prosecuting Attorney
Cedar County
Stockton, Missouri

Dear Sir:

We are in receipt of your request for an opinion which reads as follows:

"I am submitting a statement of facts from which I would like to have the ruling of your office as to the fees a constable is entitled for his duties at election.

"Linn township of this county has three voting precincts (two in Stockton and one in South Linn some seven miles distant). The constable appointed two deputies to assist him and erected the voting booths at each precinct the day before the primary. The day of the primary the deputies and constable attended the election, one to each precinct. The day after the primary the constable and his deputies removed and stored the booths.

"The constable then presented his bill to the county court for his services itemized as follows: For services attending election \$3.00; for parts of two days required in erecting the booths and taking them down, \$6.00. This

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made a total of \$9.00. He then presented a bill to the county court for \$3.00 per each deputy for attendance at the other two voting precincts in the township. This made an expenditure of \$15.00 if both bills had been allowed.

"The question is what fee the constable is entitled to and what fees if any the deputies are entitled to. There were no court orders of any kind made in the case prior to the election and pertaining to this matter.

"I would be glad to have your opinion on this question."

Section 10201, Revised Statutes Missouri 1929, sets forth the duty of a constable to attend the election,

"The constable shall attend the elections in his township, and perform such duties as are enjoined on him by law, under the direction of the judges."

Section 11777, Revised Statutes Missouri 1929, provides for the payment therefor, where it states, in part, as follows:

"For each day or part thereof required in erecting the booths, taking them down, and attending any election in his township, when required to do so by the judges of election, per day, 3.00."

The right of a constable to appoint deputies is given by Section 11754, Revised Statutes Missouri 1929,

"Every constable may appoint deputies who shall possess the same qualifications as the constable, who shall take the same oath of office and for whose conduct he shall be answerable, which appointment and oath shall be filed in the office of the clerk of the county court; said deputy or deputies, so appointed, shall devote his time to the duties of such office, * * * "

It is to be presumed at the outset that the constable in question was required by the judges to attend the election, as stated in Section 11777, supra. It is the well established rule in Missouri that officers are entitled only to those fees which are allowed by statute. The court, in State ex rel. Troll v. Brown 146 Mo. 401, said, l. c. 406;

"It is well settled that no officer is entitled to fees of any kind unless provided for by statute, and being solely of statutory right, statutes allowing the same must be strictly construed. State ex rel. v. Wofford, 116 Mo. 220; Shed v. Railroad, 67 Mo. 687; Gammon v. Lafayette Co., 76 Mo. 675. In the case last cited it is 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 services he is required to perform as a public

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officer, he has no claim upon the state for compensation for such services.' Williams v. Chariton Co., 85 Mo. 645."

That a constable is a public officer is set forth in State ex rel. Attorney General v. McKee 69 Mo. 504, where it is said:

"The constable is not a city officer, he is a State officer. It is an office created by general law for every township in the State, and every ward in the city. He is a state officer in the same sense that sheriffs and clerks of courts of record are State officers, and that judges of inferior courts are State officers, although they can only discharge the duties of their respective offices, within a limited territory and not throughout the State."

As to the fees to which a deputy is entitled, in absence of statutes setting forth duties and payment therefor, e. g., allowance for guards in transporting prisoners, etc., there is no general statute which allows deputies any salary or fees.

The Supreme Court of Missouri, in Scott v. Endicott 38 S. W. (2d) 67, took cognizance of the usual procedure in which deputies are paid, where it said:

"That being true, he is subject to the same general limitations as any other public officer in the matter of salary and fees. There is no provision in the law providing a salary for deputy sheriffs in counties such as Ozark County. It is perhaps

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common practice in some counties for the sheriff to pay his deputies a specified amount, but we are not herein concerned with the legality of such contracts."

The above case is in reference to deputy sheriffs, but the principle is equally applicable to deputy constables.

CONCLUSION

It is, therefore, the conclusion of this department that a constable is entitled only to those fees allowed by statute, and that any work done by deputies is included in these fees. Deputies, therefore, are not entitled to any payment for attendance at the polls when the constable also attends.

Respectfully submitted

Wm. ORR SAWYERS
Assistant Attorney General

APPROVED:

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

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