

Sheriffs:

Deputies may not be paid a salary of \$50.00 per month out of county funds, by order of the county court, directly nor indirectly in Sullivan County.

September 10, 1937



Mr. Forrest R. McClaskey,
Sheriff of Sullivan County,
Milan, Missouri.

Dear Mr. McClaskey:

This department wishes to acknowledge your request for an opinion wherein you state as follows:

"I do not seem to be able to get satisfactory information locally, pertaining to the payment of my chief deputy and am taking the liberty to ask your advice.

"Since January 1st. I have paid my chief deputy a flat salary of \$50.00 per month. This item is placed in my statement of account to the County Court and has been allowed each month and warrant issued to me and I have given him my personal check for same.

"It has been suggested to me that this might be in conflict with the rulings of the State Auditor and that when the County is audited some time in the future, such items would not be considered to conform with the law and I would have to return the money to the County.

"I do not wish to do any act in my official capacity which would not stand inspection and owing to my financial condition, I would certainly not be in shape to repay an amount of money of considerable size which I had obtained through mistake and to avoid such a thing I am asking you for advice.

"The duties of the Sheriff in this County since I have taken the office have been somewhat strenuous and on account of wholesale cattle-rustling and other crimes of a serious nature, I have been compelled to use a deputy continuously.

"Many trips are made without arrests or papers served and investigations concerning major crimes require that the sheriff have his deputy with him. The deputy cannot be expected to make these trips day and night without compensation even though the Sheriff does and if anything is to be accomplished worthwhile, it is necessary the deputy accompany me.

"The County Court understands this and are pleased to allow my deputy the straight salary of \$50.00 per month, but I do not wish to let them do something which might reflect on them later or place myself in an embarrassing position.

"I will thank you to advise me if the Sheriff has the right to use his deputy continuously and be paid a salary by the County Court, and if so should he be paid by warrant direct by the County Court or be paid by the Sheriff who will put the item in his expense account to the Court.

"Sullivan County has no jail and it is quite a busy job handling the prisoners to and from Sullivan County to jails in other Counties and this along with the other duties of the Sheriff really makes it out of the question for one man to do.

"The amount of money from the source of fees due the Sheriff in this County is not of sufficient size to hardly permit me to earn a living and I cannot afford to pay the deputy out of my own pocket.

"I will thank you for an opinion."

Section 11513 of the R. S. Mo. 1929 relating to the appointment of Deputy Sheriffs is as follows:

"Any sheriff may appoint one or more deputies, with the approbation of the judge of the circuit court; and every such appointment, with the oath of office indorsed thereon, shall be filed in the

office of the clerk of the circuit court of the county."

Section 11516 of the R. S. Mo. 1929, relating to emergency appointment of Deputy Sheriffs is, in part, as follows:

"In any emergency the sheriff shall appoint sworn deputies, who shall be residents of the county, possessing all the qualifications of sheriff. Such deputies shall serve not exceeding thirty days, and shall possess all the powers and perform all the duties of deputy sheriffs, with like responsibilities, and for their services shall receive two dollars per day, to be paid out of the county treasury."

These are the only two sections of the statutes relating to the appointment of deputy sheriffs. Under appointment by virtue of said Section 11513, the deputy is paid by the sheriff out of the sheriff's fees.

In Section 11516, the deputy is appointed by the sheriff for a period not exceeding thirty days and is to be paid out of the county treasury.

We are unable to find any statute giving county court the right to pay a deputy sheriff a monthly wage for continuous work in such capacity.

In the case of State vs. Endicott, 38 S. W. (2) 69, the Court in commenting on the right of a public officer to fees lays down the following rule:

"Some of the earlier cases held that the right of a public officer to fees is derived solely from the statute, and he is

entitled to no fees for services, unless the statutes give it."

The Court in the above case in commenting on the appointment of a deputy sheriff said:

"There can be no doubt that a deputy sheriff appointed by the sheriff, as provided by section 11513, R. S. Mo. 1929, is a public officer. State ex rel. Walker vs. Bus, 135 Mo. 325, 36 S. W. 636, 33 L.R.A. 616. 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."

The county would be controlled by this decision.

CONCLUSION

Therefore, it is the opinion of this department that a deputy may not be paid a salary of \$50.00 per month out of county funds, by order of the county court, of Sullivan County, directly or indirectly.

Respectfully submitted,

S. V. MEDLING
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

SVM:EB