

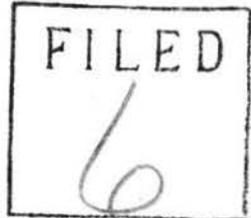
SHERIFFS:
SALARIES AND FEES:
DUTIES:
BOARD OF EQUALIZATION:

Sheriff or his deputy must be in attendance of the court for which he claims a fee of \$3.00 per day.

April 7, 1938

Sheriffs in counties not under township organization are not required to open board of equalization, and are not entitled to receive three dollars per day while board is in session.

Honorable Noah Bell,
Presiding Judge
County Court of
Oregon County
Alton, Missouri.



Dear Sir:

This is to acknowledge receipt of your request dated March 31, 1938, for an official opinion from this department, which request is as follows:

"I would like to have your opinion on the following questions:

No. 1 Can a Sheriff draw his Salary in Circuit Court at \$3.00 also draw \$300.00 for waiting on County Court on the same day when he did not appear in County Court on that day?

No. 2. Can he draw his Salary of \$3.00 per day in County Court when he is gone to take prisoners to Jefferson City on the same day and no deputy waiting on the Court.

No. 3 Is the sheriff supposed to open the Board of Equalization on April 4 and receive \$3.00 for his services.

The Court has no intention of beating the sheriff out of anything that he is entitled to and don't want to pay

him for something unless he is entitled to. We are of the opinion he is trying to double up on us."

The first and second of your questions may be answered together.

By Section 1870, R.S. Mo. 1929, it is provided as follows:

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

A county court is a court of record. Article VI, Section 36, Missouri Constitution. It would, therefore, appear that it is the duty of the sheriff, in person or by his deputy, to attend the sessions of all courts of record in his county. We construed the above statute to be mandatory upon the sheriff or his deputy to perform this duty. State v. Yager, 250 Mo. 388.

By Section 1871, R.S. Mo. 1929, it is provided that:

"The court shall audit and adjust the accounts of the officer attending it, made pursuant to this chapter," * * *

Section 11789, R.S. Mo. 1929 fixes the compensation of the sheriff for such duties as follows:

"For attending each court of record or criminal court and for each deputy actually employed in attendance upon such court the number of deputies not to exceed three per day..... 3.00"

Construing the above sections together, it is very evident that it is the mandatory duty of the sheriff in person or by his deputy to attend each court of record or criminal court held in his county when it is in session,

and that his compensation is three dollars (\$3.00) per day and for each deputy he shall receive three dollars (\$3.00) per day.

CONCLUSION

It is, therefore, the opinion of this department that the sheriff in person or by deputy must attend each session of the courts of record and criminal courts of his county and for which he shall receive three dollars (\$3.00) per day and three dollars (\$3.00) per day for each deputy. And it is further the opinion of this department that if the sheriff or a deputy are not in attendance when such courts are in session that they shall not be allowed such fee.

As to the question of whether or not the sheriff is supposed to open the board of equalization and receive three dollars (\$3.00) for his services. By Section 9811, R.S. Mo. 1929, it is provided:

"There shall be in each county in this state, except the city of St. Louis, a county board of equalization, which board shall consist of the county clerk, who shall be secretary of the same, but have no vote, the county surveyor, the judges of the county court, and the county assessor, which board shall meet at the office of the county clerk on the first Monday in April of each year: Provided, that in any county having adopted township organization, the sheriff of said county shall be a member of said board of equalization: Provided further, that in counties containing a population of more than seventy thousand, such board shall meet upon the first Monday of March in each year."

From the foregoing section, it is apparent that in counties which have adopted township organization, the sheriff is a member of the board of equalization; however, Oregon County has not adopted township organization, and, therefore, the sheriff of that county is not a member of the board of equalization.

Section 9818, R.S. Mo. 1929 provides as follows:

"The judges of the county court, the county surveyor, the county assessor, the sheriff, and the county clerk shall receive \$5.00 per day for each day they shall act as members of the county board of equalization: Provided, that this section shall not apply to boards of equalization who are paid a salary."

By this section the sheriff as a member of the board of equalization receives five dollars (\$5.00) per day, but only in counties having township organization is the sheriff a member of the board of equalization; so Section 9818 refers to boards of equalization mentioned in Section 9811.

By Section 9815, R.S. Mo. 1929, it is provided as follows:

"The said board of equalization shall have power to send for persons and papers and compel the attendance of witnesses in relation to any appeal before them, and it shall be the duty of the sheriff of the county to execute such process as may be issued to this end. A majority of said board shall constitute a quorum, and a majority of them present shall determine all matters of appeal or revision."

By this section it appears that the only duties the sheriff

has to perform for the board of equalization in counties not under township organization, is to serve the writs and processes of that board.

In our research of the statutes on this subject we failed to find that the sheriff is required to perform any duties for the board of equalization, except those enumerated in said Sections 9818 and 9815, supra, and, therefore, conclude that it is not the duty of the sheriff to attend or open the board of equalization.

An officer receives his compensation by virtue of the statutes and if they are silent as to his duties and/or as to his fees, he shall not receive any compensation therefor.

In the case of State ex rel. v. Brown, 146 Mo., l.c. 406, the Court said:

"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 officer, he has no claim upon the state for compensation for such services.'"

CONCLUSION

It is, therefore, the opinion of this department that

Mr. Noah Bell

-6-

April 7, 1938

it is not the duty of the sheriff to open the meetings of the board of equalization, and that the sheriff is not authorized to charge or collect a fee of three dollars (\$3.00) per day for either opening the meeting of the board of equalization or for attending the meeting of the board and awaiting on it.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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