

**SHERIFF:** Fee for attending county court, when court meets with Board of Equalization, Drainage and Levee District Boards.

---

January 12, 1938

Hon. G.D. Miles  
Sheriff, Dunklin County  
Kennett, Missouri



Dear Sir:

This will acknowledge receipt of your letters of December 15, 1937, and January 8, 1938, in which you request an opinion as follows:

"The County Court of Dunklin County has been refusing to allow the sheriff of the county \$3.00 per day for waiting on said Court when it meets with Drainage District Boards, the Board of Equalization and various other Levee and Drainage District Boards.

"It is my understanding that when the County Court is in session, the members thereof draw their pay and when in session the sheriff is supposed to open court. Therefore, when meeting with such boards they are in session and the Sheriff is entitled to his \$3.00 for opening Court."

Section 1870, R.S. Missouri, 1929, is in part as follows:

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

Section 11789, R.S. Missouri, 1929, fixes the sheriff's compensation 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  
 such deputies not to exceed three  
 per day . . . . . \$3.00"

Construing the two above statutes together, it is plain that it is the mandatory duty of the sheriff to attend each court of record or criminal court held in his county when it is in session, either in person or by deputy, and that his compensation is \$3.00 per day for each day in actual attendance.

The determination of the question here depends upon whether or not the county court is sitting as a court or as an administrative body in these instances above mentioned. If sitting as an administrative body, the sheriff is not entitled to a fee for each day they so sit, because an officer is not "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. Brown, 146 Mo. l.c. 406. The statute only provides a fee when the court is in session at a term thereof.

We shall consider the question as it pertains to the Board of Equalization first.

Section 9811, R.S. Missouri, 1929, is in part as follows:

"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:"

Section 9818, R.S. Missouri, 1929, is 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."

Dunklin County has township organization and under the above statutes, the sheriff is paid \$5.00 per day for acting, not as sheriff, but as a member of said board. The county court in this instance is not sitting as a court, but as the Board of Equalization and the sheriff is not entitled to a fee for attending said board under Section 11789, supra.

The county court is not authorized to sit with the Board of Supervisors of those Drainage Districts and Levee Districts organized under the provisions of Chapter 64, Articles 1 and 6, R.S. Missouri, 1929. These are districts organized by the circuit court. Nor is the county court authorized to sit with the Board of Supervisors of those Levee Districts organized under Article 7 of said chapter. In each of these three mentioned instances a Board is empowered to act for the District and we find no statutory authority for the county court to sit with or advise said board.

The districts organized under Chapter 64, Article 2, R.S. Missouri, 1929, are organized in the county court, and by Section 10843 of said article the court is "vested with the continuous management and control of said drainage district". In this district, there is no Board of Supervisors provided for.

In this type of district the county court sits as a court in the management and control of the district's affairs. This is illustrated by reason of Section 10815, R.S. Missouri, 1929, which provides that after the incorporation of said district "the court shall, by order entered of record levy" a tax to pay the expense incurred in organizing the district. Section 10816 provides that after

the district is established "the court shall, by an order of record" direct the viewers to view the land to establish the location of the various improvements and report to the court. This report is to be filed "with the clerk of the court". (Section 10817). The report is published by the clerk of the court, (Section 10819), and exceptions to the report must be filed with the county court (Section 10820). When the report is approved, the court shall "by order or record" levy the tax on the land. This whole article requires things to be done by the clerk of the county court, by order of record, by the Presiding Judge of the court and attested by the clerk, and certain things are required to be done at specific terms of said court. All this is indicative that the county court, in managing the affairs of this type of district, sits and acts only as a court of record and not as ex-officio members of the Board of Supervisors of said Drainage District.

#### CONCLUSION

Therefore, it is the opinion of this department that a county sheriff is entitled to draw the \$3.00 fee provided by statute for attending county court when that body is sitting as a court at a regular, adjourned or special term; that the county court does not sit as a court while acting as members of the County Board of Equalization; that there is no statutory authority for the county court to sit with and advise with the Board of Supervisors of those Drainage and Levee Districts organized under the provisions of Chapter 64, Articles 1, 6 and 7, R.S. Missouri, 1929. Under Article 2 of this chapter, the county court is the body which manages and controls the affairs of this type of district and sits as a court while doing so, entitling the sheriff to his statutory compensation for attending court while it so sits.

Respectfully submitted,

AUBREY R. HAMMETT, JR.  
Assistant Attorney General

APPROVED BY:

---

J.E. TAYLOR  
(Acting) Attorney General

LLB:VAL