

SHERIFFS:

Must attend courts of record or criminal courts when in session whether his services be required or not.

August 15, 1938

Honorable L. L. Robinson,
Presiding Judge,
Osage County Court,
Chamois, Missouri.



Dear Sir:

This will acknowledge receipt of your letter of July 22, 1938, requesting an opinion on the following question:

"Is the Sheriff entitled to compensation from two Courts for the same day should the Circuit and County Courts be in session on the same date, his presence being required in the Circuit and not in the County Court."

Several statutes are pertinent to this question. These are Sections 1870, 11789, 11513 and 11514, R. S. Mo. 1929.

Section 1870, supra, provides:

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

Section 11789, supra, fixes the sheriff's compensation for such duty as follows:

"For attending each court of record

or criminal court and for each deputy
 actually employed in attendance upon
 each such court the number of such
 deputies not to exceed three per day
 - - - - - \$3.00"

Section 11513, supra, provides:

"Any sheriff may appoint one or more
 deputies, with the approbation of the
 judge of the circuit court; * * * * "

Section 11514, supra, provides:

"Every deputy sheriff shall possess
 all the powers and may perform any
 of the duties prescribed by law to
 be performed by the sheriff."

In State ex rel. Stevens v. Wurdeman, 295 Mo. l.c.
 586, it is said: "Usually the use of the word 'shall'
 indicates a mandate, and unless there are other things in
 a statute it indicates a mandatory statute." The word
 "shall" is used in Section 1870, supra, and under this
 rule of law we think said section is mandatory.

Construing the four statutes above 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 said court is in session. He may attend
 either in person or by deputy. His compensation for each
 day in actual attendance is three (\$3.00) dollars.

The mere fact that his attendance was not actually
 required at the time does not excuse him from performing
 his mandatory duty of attending the court, nor does it
 prohibit him from receiving his statutory compensation
 when he does so attend either in person or by deputy.

CONCLUSION

Therefore, it is the opinion of this department
 that it is the mandatory duty of the sheriff to attend

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when in session, each court of record or criminal court held in his county, either in person or by deputy, whether his services be required or not at the time of his attendance.

Respectfully submitted,

TYRE W. BURTON
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APPROVED:

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LLB:DA