

FEES: Execution fee of One hundred twenty-five dollars provided for in Section 11791 R. S. Missouri 1929, not payable to warden of penitentiary.

February 24, 1938

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Hon. J. M. Sanders  
Warden, Missouri State  
Penitentiary  
Jefferson City, Missouri

Dear Sir:

We have your request of February 20, 1938, for an opinion as to whether or not the warden of the State Penitentiary is entitled to charge and collect a fee of One hundred twenty-five dollars made payable by Section 11791 R. S. Missouri 1929, for the execution of a death warrant.

This One hundred twenty-five dollar fee was payable to sheriffs who executed the death warrants under the old hanging law. It was not merely for compensation but went to cover all expenses incurred by the sheriff in executing a person by the old method of hanging. The method by hanging, has now been repealed and all executions are to be carried out by administration of lethal gas in the State Penitentiary under the Laws of Missouri 1937, page 221. The 1937 law merely provides, Section 3725 supra, that the warden shall make a return upon a death warrant to the court upon which the judgment was rendered showing the time, mode and manner in which it was executed.

In view of the fact that the warden receives no fees and his compensation is by way of a salary provided by Section 8391 R. S. Missouri 1929, it is apparent that the One hundred twenty-five dollar fee made payable to sheriffs and other officers in Section 11791 supra, was never intended to be made payable to the warden.

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It is therefore the opinion of this office that the fee of One hundred twenty-five dollars as provided for in Section 11791 R. S. Missouri 1929 is not payable to the Warden under the Lethal Gas Law.

Respectfully submitted,

FRANKLIN E. REAGAN,  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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