

SHERIFF'S FEES: \$1.00 fee allowed for execution; \$1.00
fee allowed for garnishment.

January 25, 1939



Mr. Fred Hartle
Sheriff
Cape Girardeau County
Jackson, Missouri

Dear Sir:

We have your request for an opinion, which is in
part as follows:

"Can the sheriff make a demand for
his fees before service is had on
executions and on a garnishment?
We have this trouble with some attor-
neys. They will have an execution
issued out of circuit court, order
the garnishment, and the sheriff
serves same. The garnishee and de-
fendant calls the attorney and an
agreement is made whereby the defen-
dant pays 10 per cent of his salary
to the attorney who releases the
garnishment so that the defendant
will not lose his job, thereby the
sheriff loses his fees because of
the attorney not notifying the sheriff
of the agreement.

Also are we entitled to \$1.00 fees
on serving an execution and \$1.00
for serving garnishment?"

Upon obtaining a judgment, the person owing such
judgment is entitled to have an execution issued thereon

at any time within ten years after the rendition of such judgment. Section 1113 R. S. Mo. 1929. We have been unable to find any statute which requires the costs incident to the execution to be paid in advance.

When an execution is issued, it is the duty of the sheriff to levy on property of the judgment debtor. Section 11518 R. S. Mo. 1929. The word "levy" means the actual seizure of property by the sheriff. Section 1175 R. S. Mo. 1929. Under Section 11789 R. S. Mo. 1929 relating to the fee of sheriffs, the sheriff is entitled to a fee "for levying every execution".

In addition to the above levy of execution, the judgment creditor is entitled to direct the sheriff "to summon garnishees". Section 1397 R. S. Mo. 1929. It is necessary that the garnishment be in writing. *Schifferli vs. Cantrell* 19 S. W. (2d) 22. It becomes the duty of the sheriff to make a return showing that the essential statutory requirements of garnishment have been complied with. *State ex rel vs. Pfeffle* 293 S. W. 512. The person garnisheed is summoned to answer to the return term of the writ. *Dimkins vs. Gootselig* 90 App. 639. Section 1397 R. S. 1929 provides that the garnishment shall be served the same as in the case of garnishment under attachment. This means that the proceeding thereafter will be the same as in attachment. For such services, Section 11789 provides that the sheriff shall receive a fee "for serving a writ of scire facias or attachment for each defendant one dollar. The term "defendant" therein refers to and includes the garnishee.

The garnishee, if possessed of money or property, may at any time after garnishment and before final judgment discharge himself by paying the same, or so much thereof as the court shall order, to the sheriff. Section 1419 R. S. Mo. 1929 provides that if judgment debtor shall fail to recover judgment against the garnishee, the court shall enter judgment for all costs, including reasonable attorneys fees and a sum sufficient to indemnify him for his time and expenses, against the plaintiff possessing the judgment.

Section 1398 limits the amount that may be subject

Mr. Fred Hartle

-3-

January 25, 1939

to garnishment to ten per cent of the wages due the head of the family. We find no authority which permits the garnishee to defeat the sheriff of his fees by paying the amount subject to garnishment directly to the judgment creditor. If, however, this payment is made, then it would appear that the sheriff would be entitled to half his usual commission on the amount paid to the plaintiff, his agent or attorney. Section 11789 R. S. Mo. 1929. In any event, the sheriff is entitled to his fees and may institute suit against a person owning the judgment and recover his fees due under the execution and garnishment. Gates vs. Buck 75 Mo. 688.

CONCLUSION

It is, therefore, the opinion of this office that the sheriff is entitled to a fee of one dollar on serving an execution, and an additional fee of one dollar for serving a garnishment in aid of that execution. It is also the opinion of this office that the sheriff is not entitled to make a demand for his fees before service is had on execution and on garnishment.

Respectfully submitted,

FRANKLIN E. REAGAN
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General
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