

**SHERIFF'S FEES:** Amount entitled for services under Sections 11789 and 11791, R. S. Mo. 1929.

December 29, 1939

Mr. John W. Mitchell  
Assistant Prosecuting Attorney  
St. Joseph, Missouri



Dear Mr. Mitchell:

We wish to acknowledge your recent letters wherein you state as follows:

"Section 11846 fixes the salary of the Sheriff of this County at \$3600. a year. Sections 11847 and 11848 provide for the salaries of deputies and assistants. The latter section contains this language:

"No compensation shall be allowed or paid to said sheriff, his deputies or assistants except that and to those herein expressly provided for, and no amount shall be charged to the county or drawn out of the county treasury for services of any deputy or assistant of said sheriff that shall not be the exact amount due said deputy or assistant.'

"Section 11850 repeals all statutory provisions outside of Article 4 allowing any fee or compensation to the Sheriff to be paid out of the County Treasury, and further provides that all fees to said Sheriff 'by the terms of any contract or any such statutory provisions

outside of this article, due or receivable from any source, are, upon the taking effect of this article, hereby transferred to the County, and shall be paid into the County Treasury.'

"Section 11851 makes it the duty of the Sheriff to charge on behalf of this County every fee that accrues in his office and to receive the same, together with the fees taxed in his office.

"Section 11852 requires the Sheriff at the end of each month to pay over to the County Treasurer all moneys collected by him for fees, and to make a verified report of the same to the County Auditor.

"Section 11789 covers the fees to be charged by the Sheriff in civil cases, and 11791 covers the fees to be charged by the Sheriff in criminal cases.

"In Section 11791 provision is also made for payment for the services of the Sheriff in taking convicts to the penitentiary, and in that section there is specified the amount to be paid to the Sheriff and to such guards as he may take along with him, together with mileage and the expenses of each convict while being taken to the penitentiary.

"I should like to have your opinion as to whether or not the Sheriff of this County is entitled to retain for himself any part of the fees which are specified by the foregoing sections in either criminal or civil cases.

"I should also like to have your opinion as to whether the Sheriff may retain for himself all or any part of the money payable to the Sheriff under the provisions of Section 11791 for services in taking convicts from this County to the penitentiary.

"In connection with the foregoing questions will say that I have been unable to find any specific statutory provision for the payment of the necessary expenses of the Sheriff in discharging the duties of his office in both civil and criminal matters. In the absence of such provision it would seem to follow that the County Court by necessary implication would have the power to pay out of the general revenue of the County the actual expenses of the Sheriff in the performance of his various official duties in both civil and criminal matters."

"Supplementing my letter to you which was mailed just a few hours ago and dated November 28th, will say that the last two paragraphs of that letter were not intended to refer to the boarding of prisoners or to the maintenance and operation of the jail. There are statutory provisions covering those matters of course."

I

Article 4, Section 11846, Revised Statutes of Missouri, 1929, provides that sheriffs of all counties containing a city of 75,000 inhabitants and less than 200,000

inhabitants, shall receive a salary of thirty-six hundred dollars per year:

"From and after the passage of this article and until the first day of January, 1921, the sheriff of all counties in this state which now contain or may hereafter contain a city of 75,000 inhabitants and less than 200,000 inhabitants, shall receive five thousand dollars per annum as his salary, to be paid in monthly installments on the first day of each month, and after the first day of January, 1921, the sheriff of all such counties shall receive a salary of only thirty-six hundred dollars per annum, said salary to be paid in monthly installments on the first day of each month."

Section 11850, R. S. Mo. 1929, provides that all statutory provisions, outside of Article 4, allowing any fee or compensation to the sheriff to be paid out of the county treasury, are repealed:

"All statutory provisions, outside of this article, allowing any fee or compensation to the before mentioned officer to be paid out of the county treasury of any such county, are, upon the taking effect of this article, hereby repealed, and all fees to said officer by terms of any contract or any such statutory provisions outside of this article, due or receivable from any source, are, upon the taking effect of this article, hereby transferred to the county, and shall be paid into the county treasury."

The question is asked - Whether the sheriff is entitled to retain for himself any part of the fees which are specified by Sections 11789 and 11791, R. S. Mo. 1929.

There is a well-known rule of statutory construction that a statute is not open to construction where the language is plain and unambiguous. *Reay v. Elmira Coal Company*, 34 S. W. (2d) 1015, 225 Mo. App. 212.

It is apparent from reading Section 11850, supra, that it was intended that the compensation of the sheriff be fixed on a definite yearly basis and that all fees "due or receivable from any source, are, \* \* \* hereby transferred to the county, and shall be paid into the county treasury."

From the foregoing we are of the opinion that fees allowed sheriffs for services in civil cases by Section 11789 R. S. Mo. 1929, and fees allowed sheriffs for services in criminal cases by Section 11791, R. S. Mo. 1929, cannot be retained by the sheriff of Buchanan County but must be paid into the county treasury.

## II

We now take up your third question - Whether the sheriff is entitled to expenses payable out of the general revenue of the county in the performance of his official duties in both civil and criminal matters.

We must first determine whether the term "expenses" is included within the meaning of the terms "fees" and "compensation" as used in Section 11850, supra.

In the case of *Harlan County v. Blair*, 49 S. W. (2d) (Ky.) 1028, 1. c. 1029, the court distinguished between the meaning of "fees" and "expenses" thus:

"Expenses incurred in performing services is distinct and separate from fees allowed for rendering such services. Fees to an officer are a recompense for his services,

while expenses allowed him are designed to indemnify or reimburse him for funds expended in performing his duties."

And in the case of State v. Thomason, 221 S. W. 491, 1. c. 494, "expenses" are distinguished from "compensation" thus:

"That the expenses of public officers incurred in the performance of their official duties are distinct from and not included in the compensation allowed them, unless authoritatively so declared, is well established upon reason and authority \* \* \* \* \*"

It is thus evident that the term "expenses" does not fall within the meaning of the terms "fees" and "compensation."

However, before a sheriff may be entitled to reimbursement for expenses necessarily made in the performance of his official duties, there must be a statute providing for reimbursement of expenses.

57 Corpus Juris, Section 1185, page 1124, states that,

"A sheriff or constable is entitled to reimbursement for disbursements necessarily made or expenses necessarily incurred by him in the performance of his official duties, when, and only when, there is a statute providing for reimbursement and the expenses of disbursements in question are within it."

We are, therefore, of the opinion that, absent statutory authority, the sheriff of Buchanan County is not entitled to expenses in the performance of his duties in civil or criminal matters.

III

Your second question is whether the sheriff may retain for himself any part of the money payable to him under the provisions of Section 11791, R. S. Mo. 1929, for services in taking convicts from the county to the penitentiary.

Section 11791, supra, provides in part as follows:

"\* \* \* For the services of taking convicts to the penitentiary, the sheriff \* \* \* shall receive the sum of three dollars per day for the time actually and necessarily employed in traveling to and from the penitentiary, \* \* \* and the sheriff \* \* \* shall receive five cents per mile for the distance necessarily traveled in going to and returning from the penitentiary, the time and distance to be estimated by the most usually traveled route from the place of the departure to the penitentiary; the sum of five cents per mile for each mile traveled, while being taken to the penitentiary, shall be allowed to the sheriff to cover all expenses of each convict while being taken to the penitentiary; \* \* \* \* \* ."

From the foregoing we are of the opinion that the sheriff would not be entitled to the sum of three dollars per day for taking convicts to the penitentiary.

We are enclosing a copy of an opinion rendered by this Department to the Honorable Forrest Smith under date of December 14, 1936, wherein we held that the five cents per mile received by the sheriff for services for taking

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convicts to the penitentiary and returning therefrom is an accountable fee, but that the five cents per mile allowed the sheriff to cover all expenses of each convict, while being taken to the penitentiary, is not an accountable fee.

Respectfully submitted,

MAX WASSERMAN  
Assistant Attorney-General

APPROVED:

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W. J. BURKE  
(Acting) Attorney-General

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