

SHERIFFS: Commission for sale of more than one farm in a
single partition suit.

FEES:

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July 23, 1943

Mr. W. C. Parker,
Sheriff
Maries County
Vienna, Missouri

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Dear Sir:

We are in receipt of your recent request for an opinion which reads as follows:

"Would like some information in regard to fees of a sheriff in sales of real estate in partition. I have a partition sale on docket at the September Term of our Circuit Court in which there are five separate and distinct farms to be sold, located in various parts of the county. Will I be allowed my commission of 2% on the first \$1000, 1% up to \$5000 and $\frac{1}{2}$ % over that sum on each separate tract's sale price? Or will I only be allowed such commission on the gross sale of all five tracts? Of course these five farms are in the same suit but on the other hand I will have to auction them off separately and file addition reports of sale."

The writer is unable to find a case exactly in point with this inquiry. However, we are of the opinion that a careful examination of the wording of the statutes relative to your inquiry will reveal the correct answer.

It is well settled that no officer is entitled to fees of any kind unless provided by statute, and being solely a statutory right, statutes allowing same must be strictly construed. See State ex rel. v. Brown, 146 Mo. 1. c. 406.

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Section 1745, R. S. Missouri, 1939, provides the order of sale in a partition suit and reads:

"The order of sale to be made in pursuance of the provisions of this article shall not specify the day of sale; and the clerk shall, without delay, deliver a duly certified copy thereof to the sheriff, who shall in due time proceed to advertise and sell; and the sale shall take place during some day of the term of the court, and be governed by the same regulations prescribed by law for sales of real estate under execution, notice thereof being given in the same manner by the sheriff as provided by law for such sales: Provided, that where a tract or parcel of land is cut or divided by county lines, the sale of the whole thereof shall be made by the sheriff or commissioner in that county wherein the greater part of such land is situated; but in such cases he shall give notice of such sale in the other county by posting up at least five printed handbills in as many public places in such county."

Furthermore, Section 1747, R. S. Missouri, 1939, demands that farms to be sold in the same partition suit shall be sold separately and reads:

"If the premises consist of distinct buildings, farms, tracts or lots of land, they shall be sold separately; or when any tract of land or lot can be divided for the purpose of sale, with advantage to the parties interested, it may be so divided and sold in parcels."

The above provisions, in a way, lead one to believe that by requiring a separate sale of the farms, the commission allowed the sheriff for selling same should be computed on each separate and individual sale. However, we do not consider this to be true. A well established rule of statutory construction is that in construing an act all provisions of the act should be construed together and not merely pick out some remote provision and construe it alone. As stated in *Elsas v. Montgomery Elevator Co.*, 50 S. W. (2d), 1. c. 133:

"Furthermore, all parts of an act should
 be made effective if possible so as to
 give it the wide applicability intended.
 * * * * *

It is also the rule that statutes relating to the same subject must be read and construed together, and, if possible, harmonized. State ex rel. Central Surety Ins. Corp. v. State Tax Commission, 153 S. W. (2d) 43, 348 Mo. 17; State v. Brockington, 162 S. W. (2d) 860.

Section 1769, R. S. Missouri, 1939, provides what compensation shall be paid to the sheriff in making a sale in a partition suit and reads as follows:

"As a compensation for his services in making a sale of real estate under the provisions of this article, by order of court for the purpose of partition, the sheriff shall receive a commission on the amount of sales not exceeding two per centum on the first one thousand dollars, and one per centum on all sums over that amount and under five thousand dollars, and one one-half of one per centum on all sums over that amount."

The above statute specifically allows the sheriff, for making a sale of real estate under order of the court, for the purpose of partition, a commission on the amount of sales, not exceeding two per cent on the first thousand dollars and one per cent on all sums over that amount and under five thousand dollars, and one-half of one per cent on all amounts over five thousand dollars. If it had been the intention of the legislature to allow this commission on each separate farm and not upon the aggregate, it would have been an easy matter to have so worded the statute as to clearly convey such intention.

A primary rule of construction of statutes is to ascertain and give effect to the law-makers' intent, and this should be done from words used, if possible, considering the language honestly and faithfully. See Artophone Corporation v. Coale, 133 S. W. (2d), 1. c. 345. In view of Section 1769, supra, providing a certain stipulated commission on the amount of sales,

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as that word is used in the plural, it was evidently the intent of the legislature to compute the commission on the total sales of all farms included in the one partition suit, and not computed upon the sale of each individual farm.

CONCLUSION

Therefore, it is the opinion of this department that the sheriff in selling several farms in a single partition suit, the sale of the farms must be made separately, however, the sheriff's commission for selling the farms is based upon the total sale of all farms included in the one partition suit.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

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