

SHERIFFS: No fee unless expressly authorized by statute.

May 7, 1943



Honorable Thomas G. Woolsey
Prosecuting Attorney
Cooper County
Boonville, Missouri

Dear Sir:

We are in receipt of your letter of May 6, 1943, in which you request an official opinion. Your letter reads in part:

"For many years the Cooper County Court has allowed the Sheriff \$3.00 per day for calling the Board of Equalization to session. I know of no provision of the statutes to authorize such an allowance in counties such as Cooper where township organization is not in force."

Your question specifically concerns the "calling" of the Board of Equalization by the sheriff and the allowance to him of a fee for said service.

Section 4342, R. S. Missouri 1939, provides a penalty for the exaction of fees to which an officer is not entitled. Said section provides:

"Every officer who shall, by color of his office, unlawfully and willfully exact or demand or receive any fee or reward to execute or do his duty, or for any official act done or to be done, that is not due, or more than is due, or before it is due, shall upon conviction be adjudged guilty of a misdemeanor."

We have been unable to find any section of the statutes or any constitutional authority for the allowance of the fee to the sheriff for simply "calling" the Board of Equalization into session. In the case of Smith v. Pettis County, 136 S. W. (2d) 282, 1. c. 285, the court in discussing the right of a public official to compensation for the performance of any duty, said:

"The rule is established that the right of a public official to compensation must be founded on a statute. It is equally established that such a statute is strictly construed against the officer. Nodaway County v. Kidder, Mo. Sup. 129 S. W. (2d) 857; Ward v. Christian County, 341 Mo. 1115, 111 S. W. 2d 182.*****"

Under this case, and the Nodaway County case cited therein, the rule is made plain.

CONCLUSION

The sheriff is entitled to no fee for any act he performs unless such compensation is expressly provided for by statute. In answer to your request it is the opinion of this office that the sheriff of Cooper County is not entitled to a fee for calling the Board of Equalization into session, due to the absence of any statutory authority for such fee.

Respectfully submitted

WILLIAM C. BLAIR
Assistant Attorney General

APPROVED:

ROY McRITTRICK
Attorney General of Missouri

WCB:SAW