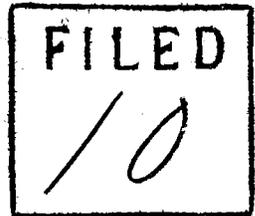


COUNTY COURTS: Use of seal, and fee of Sheriff and deputy for attending such court.

August 26, 1946.



827

Hon. Gordon R. Boyer,  
Prosecuting Attorney  
Lamar, Missouri.

Dear Mr. Boyer:

This is in reply to yours of recent date, wherein you submit a request for an official opinion as follows:

"Under the new constitution the County Court is no longer a court of record. It is, therefore, my opinion that they do not use a seal and it also is my opinion that the sheriff is not entitled to a \$3.00 allowance for opening court.

"I wish you would advise me definitely on this so that I may advise the court of this when they meet next Monday."

Section 1991, R. S. Mo. 1939, provides that each court of record shall procure and keep a seal.

Under Section 36, of Article 6 of the old Constitution, and by Section 1990, R. S. Mo. 1939, county courts were made courts of record.

However, under the new Constitution Sec. 7, Article 6, and by Senate Bill 229 of the 63rd General Assembly, county courts are no longer courts of record. Since the powers and duties of county courts are limited and prescribed by the constitution and statute, and as they are no longer courts of record, then such courts would not be required to have a seal.

On the question of the authority of the sheriff to charge a per diem for himself or his deputy for attending the county court, we find that the authority for such charge, if any, is in Section 13411, R. S. Mo. 1939, which allows the sheriff or his deputy the sum of \$3.00 per day for attendance upon courts of record. Under the new Constitution the county court is no longer a court of record and, therefore, the services of the sheriff or his deputy in attending such court would not be within the pro-

visions of said Section 13411, supra.

In order for an officer to have authority to charge a fee for his services, he must be able to point to the statute authorizing such charge. (Nodaway County v. Kidder, 129 S.W. (2d) 857, 344 Mo. 795.). As there is no statute authorizing the payment to the sheriff for attendance on courts not of record, then the sheriff would not be authorized to make such charge and the county court would not be authorized to pay same.

CONCLUSION

It is, therefore, the opinion of this department that county courts, under the new Constitution and statutes enacted in support thereof, are not courts of record and are not required to have a seal.

It is also the opinion of this department that the per diem of \$3.00 allowed to sheriffs and their deputies for attendance upon courts of record would not be permitted to be paid to the sheriff or his deputy for attendance upon county courts.

Respectfully submitted,

TYRE W. BURTON,  
Assistant Attorney-General

TWB/LD

APPROVED:

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J. E. TAYLOR,  
Attorney-General.