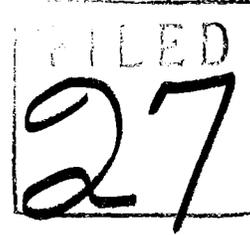


SHERIFFS: Sheriff is entitled to \$3⁰⁰ per day for attending circuit, probate and magistrate courts if his attendance has been requested by the judges of said courts.

January 3, 1947

Honorable John A. Eversole
Prosecuting Attorney
Washington County
Potosi, Missouri



Dear Sir:

We hereby acknowledge receipt of your letter of recent date requesting an opinion of this department, reading as follows:

"We would like to have an opinion relative to Sheriff's bill No. 872 (HB) now in effect.

"Prior to the time the Sheriff went on a salary, he drew \$3.00 per day for each day spent in County, Probate, and Circuit Court work. We are a fourth class County and he now draws the salary provided for this county.

"Will you please advise us if he is still entitled to the \$3.00 fee for each day he attends Circuit and Probate Court in addition to his present salary."

The compensation of sheriffs is regulated by Section 13, Article VI of the Constitution of 1945, which provides:

"All state and county officers, except constables and justices of the peace, charged with the investigation, arrest, prosecution, custody, care, feeding, commitment, or transportation of persons accused of or convicted of a criminal

offense shall be compensated for their official services only by salaries, and any fees and charges collected by any such officers in such cases shall be paid into the general revenue fund entitled to receive the same, as provided by law. Any fees earned by any such officers in civil matters may be retained by them as provided by law."

Pursuant to the above section, the 63rd General Assembly provided for the compensation of sheriffs of counties of the fourth class in House Bill 872 which reads in part as follows:

"It shall be the duty of the sheriff in counties of the fourth class to charge and collect in all instances every fee, both civil and criminal, including mileage, accruing to his office by law, * * * * * provided that he shall retain all fees collected by him in civil matters."

You will note that the sheriff is entitled to retain all the fees collected by him pertaining to civil matters. The \$3.00 fee allowed the sheriff for attending courts of record is found in Section 13411, R. S. Mo. 1939. We believe that this fee is for services rendered by the sheriff in connection with the general administration of the court and that it is clear that it is not a fee charged in connection with the investigation, arrest, prosecution, custody, care, feeding, commitment, or transportation of persons accused of or convicted of a criminal offense, even though a court might dispose of criminal proceedings as well as civil proceedings in any one day. However, before this fee may be claimed by the sheriff's office, it is necessary for the judge of the court of record to request his attendance. We direct your attention to Section 2034 of Senate Bill 228 of the 63rd General Assembly, which provides as follows:

"The several sheriffs shall attend each court held in their counties, when so directed by the court; and it shall be the duty of the officer attending any court to furnish stationery, fuel, and other things necessary for the use of the court whenever ordered by the court."

Further, we find a similar provision in Section 14 of Senate Bill 207 of the 63rd General Assembly, relating to magistrate courts, which reads in part as follows:

"* * * and when so required the sheriff shall be present in person or by deputy and attend on said court."

Therefore, the sheriff would be entitled to retain the \$3.00 fee for attending the magistrate court if he had been requested by the judge to attend said court.

It should be noted that this department has rendered an opinion to the Honorable Gordon R. Boyer under the date of August 26, 1946, wherein we held that the sheriff is not entitled to a \$3.00 fee for his attendance upon county courts.

Conclusion

Therefore, it is the opinion of this department that the sheriff in counties of the fourth class is entitled to and may retain the \$3.00 fee provided for in Section 13411, R.S. Mo. 1939, for attendance upon the circuit, probate and magistrate courts if his attendance has been requested by the judge of said courts.

Respectfully submitted,

PERSHING WILSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

PW:EG