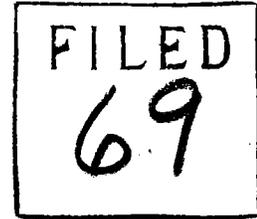


ELECTION: Sheriff to perform duties formerly performed  
SHERIFF: by constable during elections.  
CONSTABLE:

Filed: #69

August 26, 1947

Honorable James L. Paul  
Prosecuting Attorney  
McDonald County  
Pineville, Missouri



Dear Mr. Paul:

This is in reply to your letter of August 19, 1947, requesting an opinion from this department, which reads as follows:

"Confirming my telephone request this date, I would appreciate your office rendering me an opinion on the following question:

"Since the office of the constable has been abolished, who appoints the officers at the various polling places and is the expense of this officer chargeable as an election item?

From your letter we assume that the officers referred to are those law enforcement officers who are required to be present at the various polling places on election day. Section 11494, Mo. R.S.A., provides as follows:

"The constable shall attend the elections in his township, and perform such duties as are enjoined on him by law, under the direction of the judges."

It will be noted that Chapter 97, Mo. R.S.A., creating the office of constable, was repealed by Senate Bill No. 361 of the 63rd General Assembly, which is found in the Laws of 1945 at page 680. Said statute has the effect of abolishing the office of constable.

The question, of course, now arises as to the proper officer to perform such duties relative to elections as were enjoined by law on constables. Senate Bill No. 362 of the 63rd General Assembly, found at page 1079 in the Laws of 1945, provides:

"Whenever the word 'constable' appears in any statute, except insofar as any such statute applies to the City of St. Louis and to counties of the first class, the same shall hereafter be deemed to refer exclusively to and to mean 'sheriff' unless such construction is plainly repugnant to the context of any such statute."

According to the above provision it is clear that the Legislature intended the sheriff of the county and his duly appointed deputies to perform said duties.

Section 13399, Mo. R.S.A., found in Article 2 of Chapter 99, the chapter on salaries and fees, provides that constables shall be allowed a fee of \$3.00 per day "for each day or part thereof required in erecting the booths, taking them down, and attending any election in his township, when required to do so by the judges of election." Said section is still in effect even though the office of constable was abolished. Therefore, under the provisions of Senate Bill No. 362 of the 63rd General Assembly, supra, the sheriff is entitled to said fee.

While it is true that sheriffs of fourth class counties are now compensated on a salary basis, such salary contemplates only official duties in regard to criminal matters. Section 3 of House Bill No. 872 of the 63rd General Assembly, found on pages 1548 and 1549 of the Laws of 1945, provides that the sheriffs of fourth class counties shall retain all fees collected by them in civil matters. It was also held by this department in an opinion to Honorable W. V. Mayse, Prosecuting Attorney of Harrison County, dated July 16, 1946, that the sheriffs of third class counties, where a similar provision is found, are entitled to fees as members of their county boards of equalization since their duties are entirely civil in nature.

The sheriff is entitled to the fee provided in Section 13399, supra, for his services in performing the duties

Honorable James L. Paul

-3-

relative to elections which were formerly enjoined upon constables. When the sheriff acts in said capacity his duties have no connection with his duties in criminal matters, but are entirely a civil matter. Said fee should be treated as an election expense in the same manner as when constables were in existence.

Conclusion.

Therefore, it is the opinion of this department that the sheriff of a fourth class county is the proper officer to perform such duties relative to elections as were formerly enjoined by law on constables.

Respectfully submitted,

DAVID DONNELLY  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General