

FFS: Sheriff is entitled to per diem provided in Section 13411, R.S. Mo. 1939, for attendance in courts of record. Fee is properly allowed to the sheriff and not to the deputy for the deputy's attendance.

January 22, 1948

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Honorable Ralph H. Duggins
Prosecuting Attorney
Saline County
Marshall, Missouri

Dear Mr. Duggins:

This is in reply to your request for an opinion, which reads, in part, as follows:

"According to the new Constitution and the Laws of Missouri 1945, the Sheriff's office is placed on a salary basis; the question has arisen as to whether the Sheriff is entitled to receive the fees of his deputies and also the fees for himself while attending court in accordance with the order of the Circuit Judge. Your opinion in this regard would be greatly appreciated."

The Constitution of Missouri, 1945, provides in Article VI, Section 13, as follows:

"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." (Underscoring ours.)

The 63rd General Assembly enacted House Bill No. 899, Laws of Missouri, 1945, Section 3 of which pertaining to the duties of sheriffs in third class counties provides that "He shall retain all fees collected by him in civil matters."

Under date of January 3, 1947, an opinion from this office (Wilson) was sent to the Honorable John A. Eversole, Prosecuting Attorney of Washington County, which held that the fees for attending courts of record were in the nature of civil services and, therefore, did not violate the provisions of Section 13, Article VI of the Constitution of Missouri, 1945, relating to the officers' duties in connection with criminal matters and their pay therefor.

Washington County is a county of the third class, and, as such, the duties and compensation of sheriffs and their deputies are covered by House Committee Substitute for House Bill No. 872, Laws of Missouri, 1945, pages 1547 to 1550. However, an examination of these respective provisions in counties of the third and fourth classes shows them to be substantially the same, so that the opinion referred to above is equally applicable to both classes.

There also appears to be a question as to whom the fees should be paid for a deputy sheriff's attendance in a court of record. Section 13411, R.S. No. 1939, reads, in part, as follows:

"Fees of sheriffs shall be allowed for their services as follows:

* * * * *

"For attending each court of record or criminal court and for each deputy actually employed in attendance upon such court the number of such deputies not to exceed three per day 3.00

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You will note that Section 13411 is a statute providing for fees of sheriffs. The compensation of deputy sheriffs in

third class counties is provided for in House Bill No. 899, Laws of Missouri, 1945, page 1562, under Section 2 of that bill. Nowhere is there mention of a fee to be paid deputy sheriffs for attending court. It is a general rule of law that 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 vs. Kidder, 129 S.W. (2d) 857.) As there is no statute authorizing payment to the deputy sheriff for attendance in courts of record, we believe that the \$3.00 per diem provided by Section 13411 for the attendance of the deputy should properly be allowed to the sheriff of the county.

Conclusion.

It is the opinion of this department that the sheriff is entitled to the per diem provided in Section 13411, R.S. No. 1939, and that this allowance is not in contravention of Article VI, Section 13 of the Constitution of Missouri, 1945. The fee is properly allowed to the sheriff and not to the deputy for the deputy's attendance upon such courts of record.

Respectfully submitted,

JOHN R. BATY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

JRE:ml