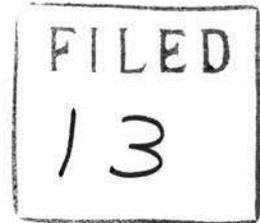


- OFFICERS) Sheriffs charged with duty of arresting persons at request
of parole or probation officer.
- OFFICERS) Sheriffs are not entitled to additional compensation for
duties performed at request of parole or probation officers.

September 22, 1949

Honorable Donald W. Bunker
Executive Secretary
State Board of Probation and Parole
Jefferson City, Missouri



Dear Sir:

Reference is made to your request of recent date for an official opinion of this Department, reading as follows:

"The members of the Board of Probation and Parole should appreciate an opinion from you relative to Section 44, Laws of Missouri 1945, page 737, which reads in part: 'Upon request of the Board or any parole or probation officer, all peace officers of this state are authorized and required to make arrests and to hold a person so arrested to the order of any parole or probation officer.'

"Can the sheriff refuse to act; and if he does act, how will he obtain his compensation for his expenses and service?"

The statutes referred to us is part of an act found Laws of Missouri, 1945, page 723. Section 44 of the act reads as follows:

"Under orders of the board, parole and probation officers shall give supervision to persons on parole and such assistance in treatment and rehabilitation and perform such other duties as may be prescribed by the board. The board and probation and parole officers shall have jurisdiction co-extensive with the boundaries of this state and may make arrests of persons on parole anywhere in the state in the course of their duties under this act. Upon request of the board or of any parole or probation officer, all peace officers of this state are authorized and required to make arrests and to hold a person so arrested to the

order of any parole or probation officer."

(Underscoring ours.)

From the foregoing you will note that sheriffs and all other peace officers of the state are required to arrest and hold persons upon direction to do so by a parole or probation officer of the Board of Probation and Parole. The language of this statute is mandatory and admits of no other construction than that such sheriffs and peace officers must comply therewith. The failure of an officer to comply with such statutes, absent a reasonable excuse for such failure, amounts to neglect of official duty. Upon proper proceedings and if the facts in a particular case warrant the exercise of such extraordinary remedy, such officer could be removed from office.

Further, with respect to the second question you have proposed, we direct your attention to four acts found Laws of Missouri, 1945, page 574, page 1570, page 1562, and page 1547, respectively, relating to the compensation of sheriffs in counties of the first, second, third and fourth classes. These acts were passed pursuant to the constitutional provision found as Section 13, Article VI of the Constitution, reading 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."

Your attention is also directed to the case of Nodaway County v. Kidder, 129 S.W. (2nd) 857, wherein the court has said at l.c. 860:

"The general rule is that the rendition of services by a public officer is deemed to be gratuitous, unless a compensation therefor is provided by statute. * * *"

We have examined all of the provisions of the act found Laws of Missouri, 1945, page 723, and do not find that any provision has been made therein for the payment of any fees to sheriffs or other peace officers for the discharge of the duties imposed on them under the provisions of Section 44 of the act. In other words, since provision has been made under the four acts referred to, supra, for the compensation of sheriffs in the various classes of counties for the discharge of their duties in connection with criminal matters, it is our thought that no additional compensation may be paid them for duties imposed by Section 44 of the act found Laws of Missouri, 1945, page 737.

What has been said heretofore disposes of that portion of your second question as relates to compensation for "service". With respect to reimbursement for "expenses", we believe that other provisions of the acts mentioned, supra, relating to the compensation of sheriffs in the various classes of counties to be pertinent.

The act found Laws of Missouri, 1945, page 574, relates to sheriffs in counties of the first class. We do not find that any provision is contained therein for reimbursing such sheriffs for expenses incurred in the discharge of their official duties.

The act found Laws of Missouri, 1945, page 1569, relates to the compensation of sheriffs in counties of the second class. We find that under sections 7 and 9 thereof provision has been made for reimbursement of the sheriff of such counties at the rate of 5¢ per mile actually and necessarily traveled in the performance of their official duties, and for reimbursement for actual and necessary traveling expenses in addition to such mileage.

The acts found Laws of Missouri, 1945, page 1562, and page 1547 relate to the compensation of sheriffs in counties of the third and fourth class respectively. In each of these acts we find that provision has been made for reimbursement of such officers for actual expenses incurred in the discharge of their official duties in an amount not to exceed 5¢ per mile.

CONCLUSION

In the premises we are of the opinion that the duties imposed upon sheriffs by the provisions of Section 44 of an act found Laws of Missouri, 1945, page 737, are mandatory in nature, and that refusal by such officers to comply with the provisions of such acts amounts to neglect of duty.

We are further of the opinion that in the event sheriffs

discharge the duties imposed under the provisions of Section 44 of the act found Laws of Missouri, 1945, page 737, they may not be further compensated for such services, as the entire compensation of such officers for duties in connection with criminal matters is provided for under four acts found Laws of Missouri, 1945, page 574, page 1570, page 1562, and page 1547, dependent upon the classification of the county in which such person is the sheriff.

We are further of the opinion that such officers may be reimbursed for travel expenses and mileage to the extent authorized under the provisions of the acts relating to sheriffs in counties of the various classes, being acts found Laws of Missouri, 1945, page 574, page 1569, page 1562 and page 1547, relating to counties of the first, second, third and fourth classes respectively.

Respectfully submitted,

WILL F. BERRY, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General