

SHERIFFS
PROBATE COURT

Oral direction to sheriff by probate judge sufficient
to enable sheriff to charge fee for attendance
at probate court.

June 7, 1950



Honorable Christian F. Stipp
Prosecuting Attorney
Carroll County
Carrollton, Missouri

Dear Sir:

We have received your request for an opinion of this department,
which request is as follows:

"I have a copy of opinion dated January 3,
1947, by Mr. Pershing Wilson, to John A.
Eversole with reference to Sheriff's fees
for Court attendance.

"Your opinion is respectfully requested upon
the following:

"1. Is an oral direction by the Probate Judge
to the Sheriff sufficient to authorize him to
charge the sum of \$3.00 per day when he
actually attends?

"2. If the oral direction is not sufficient,
may the Sheriff collect his fees if the daily
record of the Probate Court shows him in
attendance?

"3. Is it necessary that the Court direct the
Sheriff each day to attend, assuming that the
Court desires the attendance of the Sheriff?"

Section 13411, R. S. Missouri, 1939, provides in part:

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

* * * * *

"For attending each court of record or crim-
inal court and for each deputy actually em-
ployed in attendance upon such court the

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number of such deputies not to exceed
three per day.....\$3.00"

Section 2034, Laws of 1945, page 805, provides:

"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."

Section 476.26, Senate Bill No. 1138, Sixty-fifth General Assembly, which superseded Section 2035, R. S. Missouri, 1939, provides, "The court shall audit and adjust the accounts of the sheriff or other officer attending it and certify the same for payment."

The opinion dated January 3, 1947, by Mr. Pershing Wilson to John A. Eversole referred to in your letter concluded that the sheriff may retain the Three Dollar Fee provided for in Section 13411, R. S. Missouri, 1939, for attendance upon the circuit, probate and magistrate courts, if his attendance has been requested by the judge of said courts.

Section 2034, quoted above, makes no requirement concerning the form of the direction of the judge to the sheriff for his attendance at the court. There being no requirement that the direction be in writing, we feel that an oral direction is sufficient to justify the sheriff's attendance and permit the collection of the fee provided.

There is also no requirement that a new direction be given the sheriff each day. Therefore, we see no necessity for other than a general direction on the part of the judge that the sheriff attend his court.

Section 476.26, quoted above, makes it the duty of the court to audit and adjust the accounts of the sheriff, and this provision affords sufficient protection to the county so that there would be no necessity of any written record of direction on the part of the judge to the sheriff. The courts have held that the allowance by the judge is final. (State ex rel. v. Smith, 5 Mo. App. 427.)

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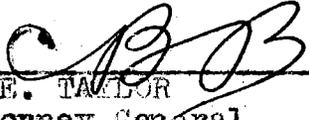
CONCLUSION

Therefore, it is the opinion of this department that an oral direction by the probate judge to the sheriff is sufficient to authorize the sheriff to charge the sum of Three Dollars per day when he actually attends the probate court, and that it is not necessary that the court direct the sheriff each day to attend.

Respectfully submitted,

ROBERT R. WELBORN
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

RRW/feh