

SHERIFFS SALARIES,) Salary of sheriffs in 3rd class counties
3RD CLASS COUNTIES:) is determined by 1950 decennial census.

SHERIFFS EXPENSE IN) County Court should allow sheriffs of 3rd
SERVING CRIMINAL) class counties expense for gasoline actually
PROCESS:) used in serving criminal process.

September 27, 1951

10-2-51

Honorable O. C. Tee
Prosecuting Attorney
Caldwell County
Kingston, Missouri



Dear Sir:

We are in receipt of your letter of recent date requesting an opinion of this department, which request is as follows:

Question No. 1 - "I request that you please advise as to the legality of the law by which the salary of the Sheriff of Caldwell County, whose term commenced on January 1, 1949, and ends on December 31, 1952, is purportedly reduced during such term of office from \$1600.00 per year to \$1200.00 per year. In other words, may such an officer's salary be legally reduced during the term for which he was elected?"

Question No. 2 - "Also, I request that you kindly advise if the County Court of Caldwell County is empowered to reimburse the Sheriff of that county for the cost of the gasoline used, in his private automobile, in the performance of his duties as sheriff, or for any part of the cost of gasoline so used by him?"

It will be noted that Caldwell County is a third class county. The population of your county for the purpose of ascertaining the salary of the sheriff is determined on the basis of the 1950 decennial census of the United States. The effective date of the 1950 decennial census was January 1, 1951. (Section 1.100, RSMo 1949.)

Honorable O. C. Tee

The statute fixing the salary of sheriffs of third class counties was enacted in 1945 (Laws of 1945, page 1562, Section 1). This section now appears in RSMo 1949, Section 57.390, and is in part as follows:

"The sheriff in counties of the third class shall receive annually for his official services in connection with the investigation, arrest, prosecution, custody, care, feeding, commitment and transportation of persons accused of or convicted of a criminal offense, the following sums: In counties having a population of less than seven thousand five hundred, the sum of one thousand dollars; in counties having a population of seven thousand five hundred and less than ten thousand, the sum of one thousand two hundred dollars; in counties having a population of ten thousand and less than eleven thousand five hundred, the sum of one thousand four hundred dollars; in counties having a population of eleven thousand five hundred and less than fifteen thousand, the sum of one thousand six hundred dollars; * * * (L. 1945 p. 1562 § 1)"

We understand from your question number one that the population of your county under the 1940 census fell within the bracket, as provided for in said Section 57.390, between eleven thousand five hundred and less than fifteen thousand, and by virtue of said section your sheriff's salary was fixed at one thousand six hundred dollars. Under the 1950 census we understand the population of Caldwell County fell within the bracket between seven thousand five hundred and less than ten thousand. By the provisions of said Section 57.390 your sheriff's annual salary would be decreased from one thousand six hundred dollars to one thousand two hundred dollars.

The decrease should have taken effect on January 1, 1951, as this is the effective date of the 1950 decennial census of the United States.

Honorable O. C. Tee

To further substantiate our position on this question we enclose copies of two recent opinions of this office. One opinion was given to Honorable Walter A. Eggers, Judge of the Probate Court of Perry County, Missouri, dated March 31, 1950, and the other to Honorable William Lee Dodd, Prosecuting Attorney, Ripley County, Missouri, dated January 10, 1951. This last opinion dealt with sheriffs of the fourth class, the other with county clerks in fourth class counties.

We believe these opinions contain the information requested by you and hold that the salary of the sheriff of your county (a third class county) is subject to being altered by a change in the population of your county as is provided for in Section 57.390, RSMo 1949.

In answer to your second question we find no statute which specifically provides that a sheriff may be reimbursed for the cost of gasoline used in the performance of his official duties as sheriff. We, however, refer you to Section 57.430, RSMo 1949, which is as follows:

"In addition to the salary provided in sections 57.390 and 57.400, the county court shall allow the sheriffs and their deputies, payable at the end of each month out of the county treasury, actual and necessary expenses for each mile traveled in serving warrants or any other criminal process not to exceed five cents per mile."

(Underscoring ours.)

In view of the fact that this statute provides the sheriff may be allowed in addition to his salary his "actual and necessary expenses for each mile traveled in serving warrants or any other criminal process not to exceed five cents per mile" we are of the opinion that the item of gasoline so used is a part of his "actual and necessary expenses" and the county court would be authorized to make allowance to the sheriff for the actual cost of gasoline so used.

We call your attention to the fact that the 66th General Assembly has amended said Section 57.390 by 1951 House Bill

Honorable O. C. Tee

No. 100, which amendment is to become effective October 9, 1951. We are enclosing herewith a copy of the truly agreed to and finally passed House Bill No. 100 of the 66th General Assembly for your use in connection with this question.

CONCLUSION

It is, therefore, the opinion of this department that the salary of a sheriff in a third class county is subject to change due to a change of the population, and that such change in salary became effective January 1, 1951.

It is the further opinion of this department that your county court should allow your sheriff his actual expenditure for gasoline for each mile traveled in serving warrants and other criminal process provided his total allowance, at this time, should not exceed five cents per mile.

Respectfully submitted,

GROVER C. HUSTON
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

GCH/fh