

SHERIFFS: The taking of a prisoner before the court for trial or
FEES: confession of guilt by the sheriff does not constitute
attendance upon such court by the sheriff. The sheriff
is entitled to a fee of \$1.00 for taking the prisoner
before the court for trial or confession.

January 3, 1951



1-4-51

Mr. A. L. Wright
Prosecuting Attorney
Stone County
Crane, Missouri

Dear Sir:

We have received the following letter from you requesting
an official opinion by this department:

"The sheriff, magistrate and county court
are in continuous difficulty over the
question of when the sheriff is entitled
to the statutory fee of \$3.00 per day for
waiting on the court.

"The sheriff makes this charge for any day
when he has taken a prisoner before the court
for a plea of guilty. Your office, I believe,
has previously given the opinion that he is
entitled to this fee when requested by the
magistrate to attend.

"The sheriff takes the position that he is
compelled to take the prisoner before the
court and that when he does so the court is
in session and transacts court business and
he is required to wait on the court although
he has not been requested to do so. Also if
a fine is paid, under the law he is the only
one who can receive the fine and costs, he
has to receive this money run it on his books
and pay it out to the proper officers. In
such cases if the magistrate says that he did
not request him to attend court, then under
your ruling he would not be entitled to this
fee."

Section 13411, R. S. Mo. 1939, which will be Section 57.28
R. S. Mo. 1949, provides for fees to be allowed sheriffs for their
services and provides for attending each court of record or

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criminal court and for each deputy actually employed in attendance upon such court, the number of such deputies not to exceed three per day, the sum of three dollars. This fee is for actual attendance upon the court throughout the day while the court is in session. As we have pointed out in previous opinions by this department, it is necessary for the judge of the circuit, probate or magistrate court to request the sheriff to attend such court in order for the sheriff to be entitled to charge said sum of three dollars for such attendance. We are enclosing a copy of the opinion dated January 3, 1947, that was sent to John A. Eversole and we are enclosing a copy of the opinion dated June 7, 1950, sent to Christian F. Stipp. Both opinions discuss the situations where the sheriff is entitled to the fee of three dollars per day for attending said courts.

Section 57.29, R. S. Mo. 1949, H.B. 2051, Revision 1949, which was formerly Section 13413, R. S. Mo. 1939, provides, in part, as follows:

"Sheriffs, county marshals or other officers shall be allowed fees for their services in criminal cases and for all proceedings for contempt or attachment as follows:

* * * * *

"For every trial in a criminal case or confession 1.00"

* * * * *

This is a fee that the sheriff is entitled to receive in all criminal cases when a prisoner is taken by the sheriff before the magistrate or circuit court in which the prisoner is tried or enters a plea of guilty. This constitutes part of the duties of the sheriff in connection with the arrest, prosecution, custody, care and commitment of persons accused of criminal offenses for which the sheriff is paid a salary as provided by Section 13, Art. VI of the new Constitution of 1945. Therefore this fee of \$1.00 must be turned over to the general revenue fund by the sheriff after it has been received by him.

The bringing of a prisoner before the magistrate or circuit court by the sheriff for trial or a plea of guilty does not constitute attendance upon such court. The sheriff takes the prisoner before such court in compliance with a warrant or commitment that has been issued by said court in which the sheriff is ordered to produce the body of the prisoner before said court. Neither does the collection by the sheriff of any fine and cost that is imposed

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by the court, constitute attendance upon the court.

The Supreme Court of Missouri in 1940 in the case of Maxwell v. Andrew County, 146 S.W. 2d 621, l.c. 625, 626, said:

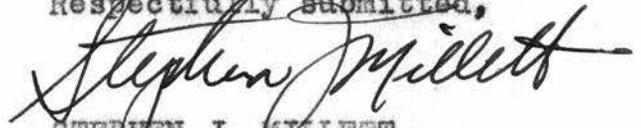
"It is well established law that the right of a public officer to be compensated by salary or fees for the performance of duties imposed on him by law does not rest upon any theory of contract, express or implied, but is purely a creature of the statute. * * *"

"* * *But if a hardship to the law enforcement officers is involved this is a matter for the consideration of the legislature and not the courts. He who accepts public office takes it cum onere. We are constrained to hold therefore that the payments made to the sheriff in this case were illegally made. * * *"

CONCLUSION

It is the conclusion of this department that the act of taking a prisoner before a circuit court or magistrate court for trial or a plea of guilty by the sheriff does not constitute attendance upon such court by the sheriff. The sheriff is entitled to a fee of \$1.00 for taking a prisoner before either the magistrate court or circuit court in all criminal cases in which the prisoner is tried or enters a plea of guilty. This fee is a criminal cost fee which must be accounted for by the sheriff and paid into the general revenue fund.

Respectfully submitted,


STEPHEN J. GILLETT
Assistant Attorney General

APPROVED:


J. E. TAYLOR
Attorney General

SJM:mw