

SHERIFFS: Under Section 57.430, RSMo 1949, as repealed and reenacted by House Bill No. 100, 66th General Assembly, sheriffs and also their deputies in counties of the third class are contemplated within the provisions of the section authorizing special allowance for expense of investigations of persons accused of or charged with criminal offense; such investigations/to be limited to the confines of the county.
not

February 11, 1952



2-14-52

Honorable Robert A. Dempster
Prosecuting Attorney
Scott County
Sikeston, Missouri

Bear Mr. Dempster:

The following opinion is rendered in reply to your recent request reading as follows:

"We would like your opinion upon the following two questions submitted concerning Section 57.430 Vernon's Annotated Missouri Statutes 1951 (laws 1951, p. __, H.B. No. 100, Section 1).

"1. Is the additional salary allowance provided by Section 57.430, aforesaid, to be allowed by the County Court to the Sheriff and to each of his Deputies in the amount of \$75.00 each, each month, assuming that the Sheriff and each of his Deputies shall qualify each month for the maximum amount allowed by the statutes?

"2. May a Sheriff or a Deputy Sheriff claim under Section 57.430, aforesaid, actual expenses in the performance of his official duties in connection with the investigation of persons accused or convicted of a criminal offense when such Sheriff or Deputy travels beyond the limits of his county?"

Investigation discloses that Scott County is a county of the third class with a population of 30,000 or more and Section 57.390, RSMo 1949, fixes the sheriff's salary of such county in the following language:

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"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: * * *; and in counties having a population of thirty thousand and more, the sum of two thousand eight hundred dollars."

The appointment of deputy sheriffs in counties of the third class is covered by Section 57.250, RSMo 1949, which provides as follows:

"The sheriff in counties of the third and fourth classes shall be entitled to such number of deputies and assistants, to be appointed by such official, with the approval of the judge of the circuit court, as such judge shall deem necessary for the prompt and proper discharge of his duties relative to the enforcement of the criminal law of this state. The judge of the circuit court, in his order permitting the sheriff to appoint deputies or assistants, shall fix the compensation of such deputies or assistants. The circuit judge shall annually, and oftener if necessary, review his order fixing the number and compensation of the deputies and assistants and in setting such number and compensation shall have due regard for the financial condition of the county. Each such order shall be entered of record and a certified copy thereof shall be filed in the office of the county clerk. The sheriff may at any time discharge any deputy or assistant and may regulate the time of his or her employment."

Powers of deputy sheriffs are described in the following language found at Section 57.270, RSMo 1949, which provides as follows:

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"Every deputy sheriff shall possess all the powers and may perform any of the duties prescribed by law to be performed by the sheriff."

Section 57.430, RSMo 1949, as repealed and reenacted by House Bill No. 100, of the 66th General Assembly, provides 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 seven cents per mile, and actual expenses not to exceed seven cents per mile for each mile traveled, the maximum amount allowable to be seventy-five dollars during any one calendar month in the performance of their official duties in connection with the investigation of persons accused of or convicted of a criminal offense. When mileage is allowed, it shall be computed from the place where court is usually held, and when court is usually held at one or more places, such mileage shall be computed from the place from which the sheriff or deputy sheriff travels in performing any service. When two or more persons who are summoned, subpoenaed, or served with any process, writ, or notice, in the same action, live in the same general direction, mileage shall be allowed only for summoning, subpoenaing or serving of the most remote. At the end of each month, the sheriff and each deputy shall file with the county court an accurate and itemized statement, in writing, showing in detail the miles traveled by such officer, the date of each trip, the nature of the business engaged in during each trip, and the places to and from which he has traveled. Such statement shall be signed by the officer making claim for reimbursement, verified by his affidavit, and filed by him with the county court. Whenever

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claim for reimbursement is made by a deputy, his statement shall also be approved in writing by the sheriff. The county court shall examine every claim filed for reimbursement, and if found correct, the county shall pay to the officer entitled thereto, the amount found due as mileage."

A close reading of Section 57.430, RSMo 1949, as repealed and reenacted, discloses that not only sheriffs but their deputies are specifically mentioned; that each is to be allowed the actual and necessary expenses for each mile traveled in serving warrants or any other criminal process in an amount not to exceed seven cents per mile; that an additional allowance not connected with the duties of serving warrants or any other criminal process is to be made to the sheriff and his deputies for actual expenses not to exceed seven cents per mile for each mile traveled in the performance of their official duties in connection with the investigation of persons accused of or convicted of a criminal offense; that the actual expenses allowable for purely investigation duties referred to in the statute is not to exceed in any one calendar month the sum of \$75.00; that the sheriff and each deputy is required to file with the county court an accurate and itemized statement, in writing, showing in detail the source of such actual expense and such statement must be signed by the officer claiming such reimbursement and must be verified; and any claim made by a deputy must be approved by the sheriff in writing.

We are unable to discover any restrictive language in this statute which would restrict the allowance as fully described in Section 57.430, RSMo 1949, as repealed and reenacted, to the sheriff, and not extend the same to his lawfully appointed deputies. The language of the statute as now written clearly contemplates that deputies are within its provisions since it places specific duties upon such deputies in respect to their claims under the statute.

The last question posed in the opinion request relates to allowances described in Section 57.430, RSMo 1949, as repealed and reenacted, for investigation work by sheriffs and their deputies, such work being apart from the service of warrants and criminal process. The question to be decided is whether such an allowance may be made to a sheriff and his deputies for expenses incurred by such officers in investigation work carried on beyond the limits of the county.

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No language is discovered in the section which would restrict the allowance of expense for investigations to those conducted solely within the county in which the sheriff is elected. The importance of this investigation work is not to be minimized and if a sheriff or his deputy determines that a proper functioning of his office requires him to conduct his investigations beyond the confines of the county, we find no prohibition against allowing him reimbursement for expenses so incurred and we deem it allowable under the statute being construed.

CONCLUSION

It is the opinion of this office that Section 57.430, RSMo 1949, as repealed and reenacted by House Bill No. 100, of the 66th General Assembly allows sheriffs, as well as their lawfully appointed deputies in counties of the third class, actual expense within the maximum amount of seventy-five dollars per month for investigation of persons accused of or convicted of a criminal offense, and such allowance may be made to cover expense of such investigations made by a sheriff or his deputies outside the limits of the county in which the sheriff was elected.

Respectfully submitted,

JULIAN L. O'MALLEY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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