

SHERIFFS : When term "day" is used in Section 57.290 as to time
: spent by Sheriffs or other officers in taking prisoners
FEES : to the Penitentiary "day" is used as a measure of time
: and means a natural or calendar day.



March 18, 1953

Honorable W. H. Holmes
State Auditor
Capitol Building
Jefferson City, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this office which request reads as follows:

"We would like to have your official opinion in regard to the interpretation to be placed on that part of Section 57.290 R.S. Missouri 1949, relating to fees to be paid by the State to Sheriffs, Marshals or other officers for taking convicts to the Penitentiary.

"We understand these fees are paid by the State to the Sheriffs as Criminal fees, that is, for serving Criminal process etc., and as the Sheriffs are on a salary basis, in so far as Criminal procedure is concerned, they turn over to the County all such fees paid for their services as Sheriff.

"The point we particularly want to clarify is concerning the per diem fee of the Sheriff and guard or guards authorized for taking prisoners to the Penitentiary. Section 57.290 above referred to provides in part that:

"** the sheriff, county marshal or other officer shall receive the sum of three dollars per day for the time actually and necessarily employed in traveling to and from the penitentiary, and each guard shall receive the sum of two dollars per day for the same,**"

"And a further provision:

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"** which in no case shall exceed three days, **"

"Is it contemplated that a "day" is considered on a calendar basis, or is this based on any certain number of hours? As an example, if a Sheriff leaves his home County early in the morning of a certain day and returns home late in the evening of the same day, would or could this constitute more than one day for the purpose of placing the proper construction on this statute?"

"Likewise, if a Sheriff left his home County early in the morning of a certain day and returned late in the evening of the following day, would this be considered two days, or could more than two days be implied in properly construing this statute."

We may look first to the statute law for guidance in the interpretation of the above-quoted statute. In Section 1.090, RSMo 1949, it is provided as follows:

"Words and phrases shall be taken in their plain and ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

We take it that the use of the word "day" in the section of the statute quoted in your letter was as a measure of time and that as the word "day" is used in its plain and ordinary meaning as directed by the statute quoted, it could mean only a natural day. In further reference to this point, the Court in the case of Friar vs. Ray, 5 Mo. 510, 1.c. 512, said as follows:

"* * * in every instance in our laws, where the word day is mentioned, a natural day is meant. * * *"

It is true that this opinion was given many years ago, but there is no record of it ever having been overruled,

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criticized or distinguished. This subject of day is again discussed in Williams vs. Williams, 30 S.W. (2d) 69, l.c. 71, where it is said:

"The natural or solar day consists of twenty-four hours, the space of time which elapses while the earth makes a complete revolution on its axis; as ordinarily considered, it is the space of time which elapses between two successive midnights. * * *."

It is further said on the same page:

"But ordinarily the law does not consider fractions of a day. A day is an indivisible point of time; it has neither length nor breadth, but simply position, without magnitude. * * *."

We believe that the provisions of Section 57.290 as quoted in your letter, are plain and definite. That in accord with the above-quoted decisions and the statute quoted the word "day" as used would mean as in the Williams case, supra, a time from a midnight to the next succeeding midnight.

It is, therefore, our answer that this statute means that if the sheriff leaves his home early in the morning and returns late in the evening, but between one midnight and the next succeeding midnight, he can be said to have utilized only one day. And as to the second inquiry, if he leaves his home early in the morning of one day and returns late in the evening of the second day, he will have utilized only two days. The Legislature unquestionably meant to use the term "day" as a measure of time and it was so used as a calendar or natural day.

CONCLUSION.

It is, therefore, the opinion of this office that where in Section 57.290, RSMo 1949, the sum of Three (\$3.00) Dollars per day is allowed sheriffs and others for time actually and necessarily employed in the taking of convicts to

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the Penitentiary the word "day" is intended to mean a calendar day as a measure of time.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. James W. Faris.

Yours very truly,

JOHN M. DALTON
Attorney General

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