

SALARY:
OFFICES:
CORONER:
SHERIFF:

A coroner performing the duties of sheriff due to a vacancy in the office may not receive additional salary.



October 6, 1955

Honorable John Hosmer
Prosecuting Attorney
Webster County
Marshfield, Missouri

Dear Sir:

This is in response to your request for an official opinion which reads as follows:

"On July 31, 1955, the sheriff of Webster County, the Honorable E. I. Cunningham, died. Immediately thereafter, the coroner of Webster County, the Honorable K. K. Kelley, qualified as sheriff under the statutes made and provided. Our county court asked the opinion of our circuit judge and we have been unable to find any specific statutory enactment allowing the coroner acting as sheriff to be paid any salary therefor. The coroner acted for about eight days at which time, in view of his understanding of the absence of a statutory provision authorizing him to draw a salary, he asked the court to be relieved, and the Court under its power acted by appointing another as acting sheriff. Is there a statutory enactment for the coroner when acting as sheriff, due to the death of the incumbent, receiving a salary therefor?"

At the outset, two statutory provisions should be noted:
Section 58.200, RSMo 1949:

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"When the office of sheriff shall be vacant, by death or otherwise, the coroner of the county is authorized to perform all the duties which are by law required to be performed by the sheriff, until another sheriff for such county shall be appointed and qualified, and such coroner shall have notice thereof, and in such case, said coroner may appoint one or more deputies, with the approbation of the judge of the circuit court; and every such appointment, with the oath of office indorsed thereon, shall be filed in the office of the clerk of the circuit court of the county."

Section 57.080; RSMo 1949:

"Whenever from any cause the office of sheriff becomes vacant, the same shall be filled by the county court; if such vacancy happen more than nine months prior to the time of holding a general election, such county court shall immediately order a special election to fill the same, and the person by it appointed shall hold said office until the person chosen at such election shall be duly qualified, otherwise the person appointed by such county court shall hold office until the person chosen at such general election shall be duly qualified;
* * *"

It is clear, thus, that in the interim between the death of the incumbent sheriff and the appointment by the county court of a successor, the coroner will perform the sheriff's duties.

No statute, however, provides for additional salary to a coroner acting as sheriff. Without statutory authorization, such compensation cannot be paid. As the Missouri Supreme Court stated in *State ex rel. Evans v. Gordon*, 245 Mo. 12, at page 28:

"* * * In *Bank v. Refrigerating Co.*, 236 Mo. 414, Brown, J., speaking for the court says: 'When the law requires a specific service to be performed by a public officer, he must

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perform that service regardless of whether any provision has been made to pay him for same.'

"Not only is the right to compensation dependent upon statute, but the method or particular mode provided by statute must be accepted. On this point the Kansas City Court of Appeals says: 'It seems the general rule in this country, as announced by the decisions and text-writers, that the rendition of services by a public officer is to be deemed gratuitous, unless a compensation therefor is provided by statute. And further, it seems well settled that if the statute provides compensation in a particular mode or manner, then the officer is confined to that manner, and is entitled to no other or further compensation, or to any different mode of securing the same.* * *'"

CONCLUSION

It is, therefore, the opinion of this office that a coroner performing the duties of sheriff due to a vacancy in the office may not receive additional salary.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walker La Brunerie, Jr.

Yours very truly,

John M. Dalton
Attorney General

WLaB:vlw