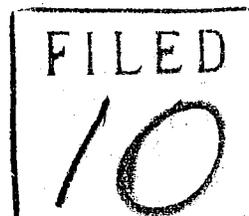


**FEEES:
SHERIFF'S FEES:
COURT EXPENSES:**

Section 476.270, RSMo 1949, is the authorization for the payment of the three dollars allowed to a sheriff of a third class county for his attendance in a court of record or a criminal court, which may be retained by the said sheriff from the treasury of the county in which the court is held.

January 7, 1960



Honorable Gordon R. Boyer
Prosecuting Attorney
Barton County
Lamar, Missouri

Dear Mr. Boyer:

It has come to our attention by letter from Judge Edison Kaderly, October 7, 1959, that there still exists a problem with respect to your original opinion request of April 16, 1959. It is our understanding that the existing problem is with respect to who is authorized to pay the three dollar fee allowed to sheriffs for attendance in a court of record or criminal court, by Section 57.280, RSMo 1949, when, by way of example, the cases docketed for a particular day are of a criminal nature.

Section 57.280, RSMo 1949, states:

"Fees of sheriffs shall be allowed for their services as follows:

* * * * *

"For attending each court of record or criminal court and for each deputy actually employed in attendance upon such court the number of such deputies not to exceed three per day\$3.00
* * *."

As you are aware, our response to Hon. John A. Eversole, Potosi, Mo., January 3, 1947, and to Hon. Rufe Scott, Galena, Missouri, March 15, 1948, rule that the service performed by sheriffs for attending courts of record is in the nature of a civil service, and that the fees allowed for this service may be retained because they are earned in a civil matter.

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Section 476.270, RSMo 1949, is as follows:

"All expenditures accruing in the circuit courts, county courts, magistrate courts, and probate courts, except salaries and clerk hire which is payable by the state, shall be paid out of the treasury of the county in which the court is held in the same manner as other demands."

Although there would appear to be no Missouri case considering specifically the point about which you have asked, it is our opinion that the courts have justifiably considered the payment of this three dollar fee to be paid by the treasury of the county in which the court is held, pursuant to Section 476.270, supra.

In the case of Grouch v. Plummer, 17 Mo.Rep. 420, the court considered a statement of costs submitted by the sheriff of Newton County which, in addition to requesting the nine dollar attendance fee for the deputy sheriff, also included the request for the nine dollars to be allowed the sheriff for his attendance on the said court. Although the question in this case concerned the authorization for the deputy sheriff's collection of this fee, the court, in some general language, stated that:

"* * * The fee bill produced in this case, by the sheriff, does not come within the twenty-second section of the second article of the act concerning costs. R. C. 1845, p. 251. It was for services rendered as sheriff, not in any criminal case, but in performing general duties belonging to his office. * * *"

It is our opinion that Section 476.270, supra, is the statute which authorizes the payment of this fee from the treasury of the county in which the court is held since the fee is to be considered a fee for services rendered by the sheriff in connection with the general administration of the court.

In the case of Miller v. Boone County, 5 Ind.App.Ct.Rep. 225, 31 N.E. 1123, the court concluded that the county was liable to pay the fee authorized by statutes similar to the ones which are here involved. We believe that the reasoning of the court would be applicable and we set forth that portion of the

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decision which may be found at l.c. 227, 5 Ind.App.Ct.Rep. 225:

"It must be conceded that no person or body politic other than the county is chargeable with the payment of such fee, and if the latter is not liable for it the Legislature stands in the attitude of having expressly fixed a fee for the service, intending that it should not be paid. If it had been the intention of the Legislature that the sheriff should attend court without compensation, it would seem that none would have been prescribed for that service. In the distribution of powers to the county governments, the law imposes upon them the duty of maintaining the circuit courts, and requires them to provide court houses, fuel, light and other things necessary to the administration of the law. Counties, by express statute, are required to pay petit jury fees and the fees and expenses of grand juries, and they are empowered to levy and collect taxes for all such purposes. It is just as necessary to have an officer present to preserve order and enforce the rules of the court as it is to have the court room furnished, heated or lighted. The several statutes upon the subject clearly and unequivocally indicate that the Legislature intended that the expenses of all these necessary incidentals of courts should be paid by the respective counties. * * *"

It is thus our opinion that Section 476.270, RSMo 1949, is the authorization for the payment of the fee allowed the sheriff of a third class county by Section 57.280, supra, from the treasury of the county in which the court is held.

CONCLUSION

It is the opinion of this office that Section 476.270, RSMo 1949, is the authorization for the payment of the three dollars allowed to a sheriff of a third class county for his attendance in a court of record or a criminal court, which may be retained by the said sheriff, from the treasury of the county in which the court is held.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James B. Slusher.

Yours very truly,

JOHN M. DALTON
Attorney General

JBS:mc